

# Briefing

## COVID-19 Public Health Response (Air Border) Order (No 2) Amendment Order (No 14) 2021 - for signature

**Date due to MO:** 28 November 2021      **Action required by:** 28 November 2021

**Security level:** IN CONFIDENCE      **Health Report number:** HR20212643

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

### Contact for telephone discussion

Name	Position	Telephone
<b>Dr Ashley Bloomfield</b>	Te Tumu Whakarae mō te Hauora 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 Withdrawn |  |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:

# COVID-19 Public Health Response (Air Border) Order (No 2) Amendment Order (No 14) 2021 - for signature

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**Security level:** IN CONFIDENCE      **Date:** 28 November 2021

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

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## Purpose of report

1. This report recommends that you sign the attached COVID-19 Public Health Response (Air Border) Order (No 2) Amendment Order (No 14) 2021 (Amendment Order).

## Summary

2. Following an interim public health risk assessment and advice to you on Saturday 27 November 2021 [HR20212642 refers], you agreed to:
  - a. Designate nine countries in southern and central Africa as 'very high risk' in Schedule 3 of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 (namely, Botswana, Eswatini, Lesotho, Malawi, Mozambique, Namibia, Seychelles, South Africa, and Zimbabwe).
  - b. Require travellers to New Zealand from those nine countries to enter managed isolation and quarantine (MIQ) for a 14-day period.
3. The attached Amendment Order gives effect to those decisions and is in line with the purposes of the COVID-19 Public Health Response Act 2020.
4. You have also previously agreed to remove five countries as very high risk and the Amendment Order also removes those countries: Brazil, Fiji, India, Indonesia, and Pakistan [DPMC-2021/22-661 refers].
5. You have consulted with the Prime Minister, Minister of Justice, and Minister of Health, and a final Amendment Order has been prepared for your signature.
6. Once signed, the Amendment Order will come into effect at 11:59pm tonight (Sunday 28 November 2021).
7. Given that the potential risk posed by the new Omicron variant of COVID-19 is significant and that the situation is urgent, the change in requirements will apply earlier than the usual 48-hour notice period. For the removal of countries, as the effect is to reduce requirements so also appropriate for a reduced notice period.

## Recommendations

We recommend you:

- a) **Note** that a new variant of COVID-19 was detected in South Africa (Omicron) and was designated by the World Health Organization as a variant of concern on 26 November 2021. **Noted**
- b) **Note** that following a public health risk assessment and advice to you on Saturday 27 November [HR20212642 refers], you agreed to:
- i. Designate Botswana, Eswatini, Lesotho, Malawi, Mozambique, Namibia, Seychelles, South Africa, and Zimbabwe as very high risk countries in Schedule 3 of the Air Border Order. **Noted**
- c) **Note** that the attached COVID-19 Public Health Response (Air Border) Order (No 2) Amendment Order (No 14) 2021 also gives effect to your previous decision to remove five countries as very high risk, being: Brazil, Fiji, India, Indonesia, and Pakistan [DPMC-2021/22-661 refers]. **Noted**
- d) **Note** that the attached COVID-19 Public Health Response (Air Border) Order (No 2) Amendment Order (No 14) 2021 gives effect to those decisions. **Noted**
- e) **Note** that officials advise that the attached draft Order is in line with the purposes of the COVID-19 Public Health Response Act 2020, to prevent and limit the risk of, the outbreak or spread, of COVID-19. **Noted**
- f) **Note** that given the potential risk posed by the new Omicron variant is significant and that the situation is urgent, while the removal of the five other countries only reduces requirements, the change in requirements will apply earlier than the usual 48-hour notice period. **Noted**
- g) **Sign** the attached COVID-19 Public Health Response (Air Border) Order (No 2) Amendment Order (No 14) 2021. **Yes/No**



Dr Ashley Bloomfield  
**Te Tumu Whakarae mō te Hauora**  
**Director-General of Health**  
Date: 28 November 2021



Hon Chris Hipkins  
**Minister for COVID-19 Response**  
Date: 28/11/21

# COVID-19 Public Health Response (Air Border) Order (No 2) Amendment Order (No 14) 2021 - for signature

## Background

1. A new COVID-19 variant (B.1.1.529) was detected in South Africa and first reported to the World Health Organization (WHO) on Wednesday 24 November 2021. On Friday 26 November 2021, the WHO designated as a variant of concern and named it Omicron.
2. On Saturday 27 November 2021, the Ministry of Health undertook an interim Public Health Risk Assessment (PHRA) to assess the risk that travellers entering New Zealand from nine countries in southern and central Africa pose to New Zealand.
3. As there is limited data on this new variant, as a precautionary measure the PHRA recommended that the nine countries be designated as very high risk and that travellers to New Zealand from those countries complete a longer MIQ period.

## Process for amending a section 11 Order

4. 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):
  - a. an Epidemic Notice is in force (under the Epidemic Preparedness Act 2006); or
  - b. it has been authorised by the Prime Minister.
5. There is currently an Epidemic Notice in place, which allows Orders to be made under section 11 of the COVID-19 Act.
6. As the Minister for COVID-19 Response, you may make an Order under section 9 of the COVID-19 Act.
7. To make an Order under section 9 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 (whether voluntary or enforceable) 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 Ministers 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.

## **Public health advice**

8. You have previously been provided with public health advice on the rationale for these amendments [HR20212642 refers].
9. Officials will continue to monitor this evolving situation daily and will undertake a full PHRA of the situation on Monday 29 November 2021 when further information on transmission and variant characteristics may be available.
10. That full PHRA will also consider actions taken by other countries and specifically look at whether any additional precautions are required, and whether there are any implications for the imminent transition to the COVID-19 Protection Framework.
11. While there are no immediate plans to designate further countries as very high risk, it is likely more will need to be added as we gather more information on case detections internationally.

## **Contents of the Amendment Order**

### **Nine new countries designated as 'very high risk'**

12. The Amendment Order will designate the following countries as very high risk in Schedule 3 of the Air Border Order:
  - a. Botswana
  - b. Eswatini
  - c. Lesotho
  - d. Malawi
  - e. Mozambique
  - f. Namibia
  - g. Seychelles
  - h. South Africa
  - i. Zimbabwe.

### **Removal of five other countries**

13. The Amendment Order also gives effect to your previous decision to remove five other countries from the very high risk country list in Schedule 3 of the Air Border Order. Those countries are: Brazil, Fiji, India, Indonesia, and Pakistan [DPMC-2021/22-661 refers].

## **New Zealand Bill of Rights Act 1990**

14. Each time an Order is proposed under the COVID-19 Public Health Response Act 2020 you must consider 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).

15. 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.
16. s 9(2)(h)

### **Equity**

17. There is potential for the impact of these restrictions to be more significantly experienced by New Zealanders who originate from the nine new countries. Given that the limitations on travel to New Zealand is only intended to be a temporary measure, I do not consider the equity concerns to be sufficient to prohibit making this Amendment Order.

### **Next steps**

18. Officials recommend that you sign the attached Amendment Order today, so it can come into effect at 11:59pm tonight (Sunday 28 November 2021).

ENDS.

PROACTIVELY RELEASED

## **COVID-19 Public Health Response (Air Border) Order (No 2) Amendment Order (No 14) 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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### **New Part 11 inserted into Schedule 1**

### **Order**

- 1 Title**  
This order is the COVID-19 Public Health Response (Air Border) Order (No 2) Amendment Order (No 14) 2021.
- 2 Commencement**  
This order comes into force at 11.59 pm on 28 November 2021.
- 3 Principal order**  
This order amends the COVID-19 Public Health Response (Air Border) Order (No 2) 2020.
- 4 Clauses 18F and 18G revoked**  
Revoke clauses 18F and 18G.

**5 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.

**6 Schedule 3 amended**

- (1) In Schedule 3, insert in their appropriate alphabetical order:

Botswana  
Eswatini  
Lesotho  
Malawi  
Mozambique  
Namibia  
Seychelles  
South Africa  
Zimbabwe

- (2) In Schedule 3, revoke the items relating to Brazil, Fiji, India, Indonesia, and Pakistan.



**Schedule**  
**New Part 11 inserted into Schedule 1**

cl 5

**Part 11**  
**Provision relating to COVID-19 Public Health Response (Air Border) Order (No 2) Amendment Order (No 14) 2021**

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

(1) Schedule 3 of this order, as in force immediately before the commencement of the Amendment Order, continues 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 14) 2021.

Dated at Wellington this 28<sup>th</sup> day of Nov 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 28 November 2021.

The amendments affect Schedule 3 of the principal order, which lists very high risk countries. Clause 8A of the principal order provides that a person must not arrive in New Zealand by air if they have been in a very high risk country in the preceding 14-day period.

The amendments—

- designate Botswana, Eswatini, Lesotho, Malawi, Mozambique, Namibia, Seychelles, South Africa, and Zimbabwe as very high risk countries:
- remove Brazil, Fiji, India, Indonesia, and Pakistan from the list of very high risk countries.

Clauses 18F and 18G of the principal order (which provide exemptions from clause 8A in relation to arrivals from Fiji) are revoked as a consequence of the removal of Fiji from the list of very high risk countries.

**COVID-19 Public Health Response (Air Border) Order  
(No 2) Amendment Order (No 14) 2021**

Explanatory note

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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 2019.

Date of notification in *Gazette*:

This order is administered by the Ministry of Health.

PROACTIVELY RELEASED