



Briefing

ADVICE ON TRANSIT PASSENGERS NOT COMPLETING THEIR JOURNEY

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

Date	27/01/2022	Priority	High
Deadline	28/01/2022	Briefing Number	DPMC-2021/22-1284

Purpose

This paper provides advice on options to deter New Zealand citizen transit passengers from not completing their onward journey and recommends that public communications are strengthened to discourage future non-compliance by highlighting the penalties in place for entering New Zealand without an MIQ allocation.

1. There was a legal requirement to have a valid MIQ voucher on arrival in New Zealand. 2. Failing to comply with this legal requirement could have resulted in a \$1,000 fine, or a fine of up to \$4,000 if it is imposed by the Court. The penalties are set out here: <https://www.legislation.govt.nz/regulation/public/2021/0393/latest/LMS600713.html>. 3. Anyone arriving without an MIQ voucher was referred to the Police.

Recommendations

1. **Note** that there have been several recent instances where New Zealand citizens have sought to enter New Zealand without an MIQ allocation by presenting as transit passengers flying through New Zealand to a third country destination, and then refusing to board their connecting flight;
2. **Note** that at present, non-compliant travellers are referred to Police for enforcement action and could be liable for:
 - a) A fee/fine under the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 – either a \$1,000 infringement fee, or a court-imposed fine of up to \$4,000
 - or:
 - b) A conviction under the COVID-19 Public Health Response Act 2020 (the Act) (noting that this this is not current practice by Police)

- 3. **Agree** to highlight the existing relevant penalties for non-compliance at an upcoming media engagement and on the Unite Against COVID-19 website and social media channels, including by outlining that non-compliance could result in a fee or fine and that intentional non-compliance with the COVID-19 Public Health Response Act 2020 could risk prosecution and the possibility of a conviction; YES / NO
- 4. **Note** that officials have also considered other options to deter non-compliance including increasing the amount of the relevant infringement fee/fine and/or removing the infringement offence to make prosecution the only available enforcement action under the COVID-19 Act;
- 5. **Note** that given these other options would only be short-term, until the Reconnecting New Zealanders Steps commence, there is likely be limited additional deterrent effect in pursuing these options;
- 6. **Note** that there is a significant risk that if the infringement offence is removed, travellers may not ultimately be penalised for non-compliance due to the need for Police to prove intentional non-compliance, beyond reasonable doubt;
- 7. **Note** that the Ministry of Transport and Customs are working with stakeholders to identify any improvements to strengthen assurance that travellers meet New Zealand's entry requirements;
- 8. **Note** that officials will keep this situation under review and provide further advice if required;
- 9. **Agree** that this briefing will be proactively released, subject to any appropriate redactions. YES / NO

 Alice Hume Manager, Strategy and Policy, COVID-19 Response	 Hon Chris Hipkins Minister for COVID-19 Response
27/01/2022	29 / 1 / 2022

Contact for telephone discussion if required:

Name	Position	Telephone	1st contact
Alice Hume	Manager, Strategy and Policy, COVID-19 Response	s9(2)(a)	✓
Paul Ballantyne	Senior Policy Advisor	s9(2)(a)	

Minister's office comments:

- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
- Overtaken by events
- Referred to

s9(2)(g)(i)

I expect a much more proactive and prompt approach to be taken to people who seek to exploit this possible loophole. CH

Proactively Released


Background

1. On 12 December 2021, a family (two adults, and two children) arrived in New Zealand from Sydney with the stated intention of transiting on to Fiji. They did not have a confirmed MIQ allocation and were permitted to board their flight without one due to being transit passengers. However, on arrival in Auckland the family decided they no longer wished to continue with their onward flight. As they were New Zealand citizens, the Immigration Border Office could not deny them entry or force them to depart on their flight to Fiji and the family were transferred to MIQ.
2. On 19 January the New Zealand Herald released an article outlining how this family were able to arrive in New Zealand without an MIQ voucher. These details have been amplified widely on social media.
3. Another couple (both New Zealand Citizens) arrived in Auckland on 21 January 2022 from Los Angeles, having spent 30 days in Mexico. The couple were to transit through Auckland to Sydney, but instead informed border agencies of their intention to land in New Zealand. The couple did not provide a reason for not taking their onward leg to Sydney and were then assessed by Health officials before being transferred to an MIQ facility.
4. Over the weekend of 22 January, a person travelled to Auckland from Brisbane via Melbourne and Nadi. These flights were purchased on 12 December 2021 when the air border was due to reopen at 11:59pm on 16 January 2022 with home isolation. While different to transit cases, officials are reviewing how they arrived in Auckland without an MIQ voucher following the postponement of changes to air border settings.

Current requirements for travellers entering New Zealand

5. For most people entering New Zealand, it is a legal requirement, under clause 8 (2a) of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 (the order), to have a confirmed MIQ allocation for the relevant date.
6. MIQ is an essential tool in ensuring that travellers entering the country do not seed a COVID-19 outbreak in the community, and airlines are required to check that travellers have evidence of a confirmed allocation before they board their flight.
7. Transit passengers (including New Zealand citizens) are exempt from the requirements of clause 8 of the Order - including the requirement to have a MIQ allocation - unless they are granted permission to enter New Zealand in accordance with the Immigration Act.
8. However, New Zealand citizens who arrive in New Zealand without a confirmed MIQ allocation are in breach of the Order. This includes New Zealand citizens who have onward travel booked, but do not catch their connecting flight.
9. Therefore, while New Zealand citizens have a right to enter New Zealand, under the New Zealand Bill of Rights Act 1990, travellers who arrive in New Zealand without a MIQ allocation can be referred to the Police for enforcement action.

Consequences for travellers who arrive in New Zealand without a confirmed MIQ allocation

10. Travellers who do not comply with the Order are referred to the NZ Police for enforcement action. In this situation, travellers arriving in New Zealand without an MIQ allocation can be liable for:
 - a. A fee/fine under the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 – either a \$1,000 fee, or a fine of up to \$4,000, if imposed by the court.
 - or:
 - b. On conviction under the COVID-19 Public Health Response Act 2020 (the Act) either imprisonment for no more than 6 months or a fine not exceeding \$12,000 for an individual or \$15,000 for other persons (i.e. businesses).
11. Travellers are also liable for MIQ charges under the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 (unless they left prior to August 2020 and are intending to stay for at least 180 days OR they have the fees waived based on undue financial hardship).
12. While arriving in New Zealand without a confirmed allocation constitutes an infringement offence under the Order, intentional non-compliance with Orders constitutes a criminal offence under the Act. Therefore, a person who commits such conduct can either a) be issued an infringement notice under the Order, or b) charged with a criminal offence under the Act. However, it is currently not Police practice to charge people with a criminal offence for conduct that is otherwise designated as an infringement offence (such as failure to have a confirmed MIQ allocation).
13. ^{s9(2)(h)} 

There are limited options for strengthening the consequences for non-compliance

14. It is currently difficult for many New Zealand citizens to secure a MIQ allocation, which is likely to have contributed to travellers attempting to enter New Zealand through other (unlawful) ways.
15. While there have been several incidents of New Zealand citizens arriving in New Zealand without a MIQ allocation, it is unclear what the future size and scale of the issue is. Despite this issue being outlined in the media, there is no evidence to currently suggest that this is a widespread issue.
16. It is likely that if Ministers agree to implement Reconnecting New Zealanders Step 1 from the end of February (and Step 2 not long after), this will provide a pathway for these travellers to enter New Zealand.

Officials have considered options to strengthen the consequences for non-compliant travellers

17. If Ministers consider that further consequences for non-compliant travellers are required in the short-term, officials have considered several options, including:

- a. Increased communications on the requirements for travellers and the penalties for non-compliance (recommended)
- b. Increasing the fee for the infringement offence for not having a confirmed MIQ allocation
- c. s9(2)(h)

18. Options b) and c) below would require more substantial time and resource commitment to implement.

Increased communications on the requirements for travellers

19. Officials recommend providing additional proactive communications on the legal requirements for travellers entering New Zealand and the relevant penalties to help deter future non-compliance.

20. At present, there is limited public messaging about the consequences of a deliberate breach of the Order or the Act. Proactive communications could be provided by:

- a. A Ministerial statement or announcement; and
- b. Messaging on the Unite Against COVID-19 website and social media channels.

21. Strong and clear communications on the penalties of non-compliance, including the risk of prosecution and the possibility of a conviction, is likely to be sufficient in deterring any substantial increase in travellers aiming to enter New Zealand without a MIQ allocation in the short-term.

Increasing the infringement offence for non-compliance

22. Officials have considered whether the infringement offence in the Order, for entering New Zealand without a MIQ allocation, could be increased. There are two ways of doing this:

- a. **Updating the classification of the offence in the Order from a medium-risk offence to a high-risk offence.** This would increase the penalty to either a \$4,000 fee or a \$12,000 fine (if imposed by the courts). However, to do this, the definition of high-risk offence in the COVID-19 Public Health Response (Infringement Offences) Regulations 2021 would have to be changed first. This is because the current definition of high-risk offence only allows for consideration of the risk of transmitting or spreading COVID-19. That is, the aim of changing the definition in the regulations would be to enable consideration of the individual risk posed by the traveller but also the 'system level' risk to the COVID-19 border system. Changing the definition in this way may have unintended consequences for other references to the risk-based criteria across several COVID-19 orders. The COVID-19 Public

Health Response (Infringement Offences) Regulations 2021 were carefully developed in close consultation with key agencies, and this would need to be revisited to ensure that the regulations can appropriately be used across the wide range of orders made under the COVID-19 Act.

- b. **Removing the risk classification of the infringement offence in the Order for entering New Zealand without an MIQ allocation.** This would mean that Police would have to issue the default infringement fee of \$4,000 outlined in Section 26 of the Act. This could be a short-term option until the new Air Border Order comes into effect.

Increasing the infringement offence penalty may have limited effectiveness

- 23. Travellers who are prepared to forfeit onward flights in order to enter (and pay for) MIQ unlawfully, are likely to go to significant lengths to enter the country. The current examples highlight that travellers are prepared to find a way of entering New Zealand at a significant financial cost. It is therefore likely that a financial penalty would have limited effectiveness in deterring non-compliant travellers.
- 24. As these changes would only be short-term, until the Reconnecting New Zealanders Steps commence, there may be little value in pursuing increasing the infringement offence penalty.

Removing the infringement offence to encourage prosecution

- 25. Providing further clarity, including by potentially removing the designation of clause 8(2A) as an infringement offence, could make the offence a full criminal offence and result in prosecution as the default enforcement action under the COVID-19 Act. This would mean that non-compliant travellers could be at risk of conviction with a maximum penalty being a term of imprisonment of up to 6 months or a fine of up to \$12,000, as imposed by the courts.
- 26. The risk of conviction may be a bigger deterrent for people than a financial penalty given the potential consequences a conviction may have on future travel and/or careers.
- 27. However, there is a significant risk that if the infringement offence is removed, travellers may not end up being penalised for non-compliance. In order for a conviction to occur, Police would need to prove intentional non-compliance beyond reasonable doubt¹. This would require resources to support a prosecution and may still result in some people not being prosecuted if the evidence is insufficient to generate a reasonable prospect of conviction.
- 28. Further work would need to be done on any possible ‘flow-on’ implications of removing this infringement offence.

Next Steps

¹ The offence is drafted to need intent as an element of the offence.

29. Subject to your agreement, officials recommend that you highlight the existing relevant penalties for non-compliance at an upcoming media engagement, including by outlining that non-compliance could result in a fee or fine and that intentional non-compliance with the COVID-19 Public Health Response Act 2020 could risk prosecution and the possibility of a conviction. Officials would then amplify these messages through the Unite Against COVID-19 website and social media channels.
30. The Ministry of Transport and Customs are working with stakeholders to identify any improvements to strengthen assurance that travellers meet New Zealand's entry requirements.
31. Officials will keep the situation under review and provide further advice if required.

Consultation

32. This briefing has been prepared in consultation with MBIE (MIQ), Customs, Crown Law, DPMC (PAG) and the Ministries of Foreign Affairs and Trade, Health, Justice, and Transport.

Proactively Released