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Nigel Gray

By email: [fyi-request-20206-05603711@requests.fyi.org.nz](mailto:fyi-request-20206-05603711@requests.fyi.org.nz)  
Ref: H2022011076

Tēnā koe Nigel,

**Response to your request for official information**

Thank you for your request under the Official Information Act 1982 (the Act) to Manatū Hauora (Ministry of Health) which was partially transferred from the Department of Internal Affairs on 24 August 2022. You requested:

*“Is there any law that permitted the overriding of this passport in this particular instance (the lockdown of New Zealand) and if so what is that law?”*

The COVID-19 Public Health Response (Air Border) Order (No 2) 2020 (Air Border Order) and the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 (Isolation and Quarantine Order) made pursuant to the COVID-19 Public Health Response Act 2020 (COVID-19 Act) placed restrictions on New Zealand Passport holders seeking to travel to New Zealand.

Please find information related to your request **attached** as **Appendix One**.

Further information about past or present COVID-19 Orders under the COVID-19 Public Health Response Act 2020 (COVID-19 Act) can be found on the Manatū Hauora website here: [www.health.govt.nz/covid-19-novel-coronavirus/covid-19-response-planning/covid-19-epidemic-notice-and-orders](http://www.health.govt.nz/covid-19-novel-coronavirus/covid-19-response-planning/covid-19-epidemic-notice-and-orders).

I trust this information fulfils your request. Under section 28(3) of the Act, you have the right to ask the Ombudsman to review any decisions made under this request. The Ombudsman may be contacted by email at: [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz) or by calling 0800 802 602.

Please note that this response, with your personal details removed, may be published on the Manatū Hauora website at: [www.health.govt.nz/about-ministry/information-releases/responses-official-information-act-requests](http://www.health.govt.nz/about-ministry/information-releases/responses-official-information-act-requests).

Nāku noa, nā

  
Phil Knipe  
**Chief Legal Advisor**  
Ministry of Health

## Appendix One

The COVID-19 Public Health Response (Air Border) Order (No 2) 2020 (Air Border Order) and the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 (Isolation and Quarantine Order) made pursuant to the COVID-19 Public Health Response Act 2020 (COVID-19 Act) placed restrictions on New Zealand Passport holders seeking to travel to New Zealand.

The following is a statement of the COVID-19 legal framework as at 5 February 2022.

### COVID-19 Public Health Response Act 2020

The Air Border Order No 2 and the Isolation and Quarantine Order were made pursuant to sections 8 – 12 of the COVID-19 Act. Relevant amendments to the Orders were made pursuant to section 15 of the COVID-19 Act.

Under section 8 of the COVID-19 Act, COVID-19 order may be made while an epidemic notice under section 5 of the Epidemic Preparedness Act 2006 is in force in relation to COVID-19. An epidemic notice has been in force since 24 March 2020.

Section 9 sets out the requirements for making COVID-19 orders under section 11. Section 11(1) of the COVID-19 Act (as it was at the date relevant orders were made) empowered the Minister to make orders “to require persons to refrain from taking any specified actions that contribute or are likely to contribute to the risk of the outbreak or spread of COVID-19, or require persons to take any specified actions, or comply with any specified measures, that contribute or are likely to contribute to preventing the risk of the outbreak or spread of COVID-19, including (without limitation) requiring persons to” satisfy any specified criteria before entering New Zealand from a place outside New Zealand, which may include being registered to enter an MIQ facility on arrival in New Zealand (s 11(1)(a)(x)).

### Requirement to have evidence of a pre-departure test prior to travel to New Zealand

Clause 8(2B) Air Border Order imposes a requirement that people arriving in New Zealand by air have a negative result from a COVID-19 test. This clause has been amended a number of times since enactment.

In the version of the order in force on 1 September 2021, the cl 8(2B) provided that a person arriving in New Zealand by air must have:

- A negative result from a COVID-19 test administered no more than 72 hours before their journey to New Zealand began; or
- evidence from a medical practitioner, within 72 hours of departure, that the person is essentially unable to undergo a test, and that they do not have symptoms of COVID-19; or
- In the case of a positive result to the required test, evidence from a medical practitioner that the positive test is indicative of historic, rather than current, infection.

On 7 January 2022, the relevant timeframes provided in cl 8(2A) were reduced from 72 hours to 48 hours.

COVID-19 test is defined in cl 8(5) as:

- any applicable examination or test (or both) for COVID-19 that the Director-General has specified by notice in the Gazette; and
- any appropriate evidence of the result that the Director-General has specified by notice in the Gazette.

The test specified by the Director-General has changed over time. Also, exceptions have been provided at various times for people travelling from various countries to either exempt all people travelling from a country from the requirement entirely, or to impose differing pre-departure testing requirements for people travelling from different countries. Given the pre-departure testing requirement is not specifically at issue in these proceedings, we will not provide details of these exceptions.

#### Requirement to hold a MIAS allocation prior to travel to New Zealand

From 1 November 2020, Cl 8(2A) of the Air Border Order No 2 has provided that, a person who arrives in New Zealand by air must:

- Have a confirmed allocation; and
- Produce evidence of a confirmed allocation when requested by one of a number of classes of officials.

From 1 November 2020 to 9 April 2021, under cl 4 of the Air Border Order:

- “confirmed allocation” was defined as a confirmed allocation in the managed isolation allocation system to enter a managed isolation or quarantine facility in New Zealand.
- “managed isolation allocation system” was defined as a Web-based managed isolation allocation system operated by or on behalf of the New Zealand Government

On 9 April 2021, clauses 15H to 15M were added to the Isolation and Quarantine Order to provide a more specific and particularised basis for the MIAS system. This is discussed in the next section.

From 9 April 2021 to 20 November 2021, “confirmed allocation” was defined in cl 4 the Air Border Order No2 by reference to clause 15H of the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020. 208. On 20 November 2021, a new part was added to the COVID-19 Act to provide a more particularised basis for the MIAS system in primary legislation.

From 20 November 2021, “confirmed allocations” was defined n cl 4 of the Air Border Order No2 by reference to s 32J of the COVID-19 Act.

#### Management of the MIAS and offline allocations

From 1 November 2021, the management of the MIAS was empowered by s 11(1)(x) of the COVID-19 Act.

From 9 April 2021, management of the MIAS was provided for in clauses 15H to 15M of the Isolation and Quarantine Order.

From 20 November 2021, management of the MIAS has been provided for in ss 32J to 32O of the COVID-19 Act.