

Briefing

Enhancing compliance with the border workforce testing regime

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

Contact for telephone discussion

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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 Withdrawn | |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:

Enhancing compliance with the border workforce testing regime

Security level: IN CONFIDENCE **Date:** 23 April 2021

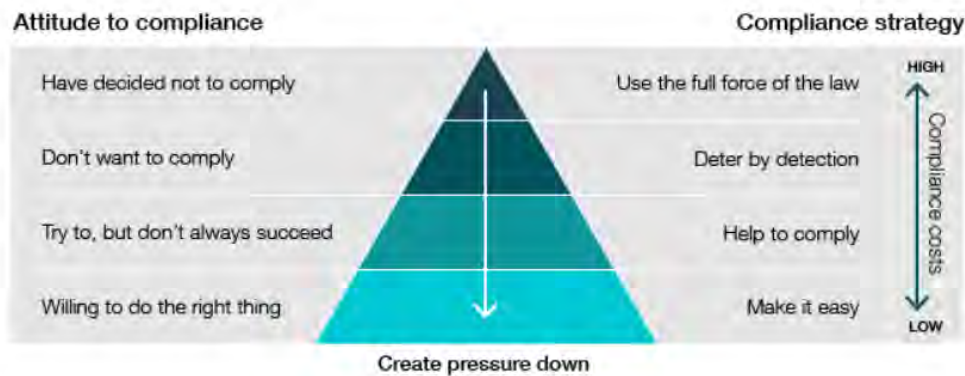
To: Hon Chris Hipkins, Minister for COVID-19 Response

Purpose of report

1. This report provides an update and advice on measures to enhance compliance with the border workforce testing regime.
2. This report discloses all relevant information.

Summary

3. The mandatory testing regime and vaccination programme for our border workforce are key elements of the public health settings to prevent transmission across the border and into our communities.
4. We understand that Government has been concerned about compliance with the border worker testing regime, and so we are taking steps to address this. The first step was the requirement in the recent amendment to the COVID-19 Public Health Response (Required Testing) Order 2020 (the Required Testing Order), making use of the Border Worker Testing Register (BWTR) mandatory.
5. The requirement on Persons Conducting a Business or Undertaking (PCBUs) to use the BWTR comes into force on Tuesday 27 April. As part of this shift the Ministry is moving from the previous complaints-based compliance approach to an active monitoring and compliance regime to ensure compliance by both the PCBUs and border workers. The Ministry is preparing for this and supporting PCBU's to comply.
6. To ensure that we are able to fully address the root causes of any potential compliance issues we are undertaking work to better understand compliance behaviour and barriers in relation to the testing regime. The first step in this is to cleanse the data on the BTWR to ensure we have an accurate understanding of the extent of any current compliance issues and give us a clear baseline from which to improve.
7. A compliance framework will guide our approach to compliance, and ensure we are able to take effective actions to drive up compliance over time. The model we are adopting, at a conceptual level, is shown in the diagram below:



8. We are developing a multi-pronged approach to investigating and implementing measures to improve and maintain compliance across our testing regime more broadly than just relying on the BWTR, including:
- putting a monitoring framework in place
 - increasing the visibility of compliance
 - ensuring robust reporting
 - investigating ways to increase the available testing options, including less invasive methods such as saliva testing.
9. We are specifically exploring saliva testing as one of options to make testing easier and less invasive with the intent that this will address any testing fatigue or reluctance issues that we uncover. We are currently determining how saliva testing can interact with the current testing regime to provide a continuing level of assurance, while reducing the testing burden experienced by individuals. The live RFP process supports this.
10. Further advice on options to enhance testing compliance through providing greater testing choice and less invasive testing methods, including saliva testing will be provided by 30 April 2021.
11. Progress updates will be prepared as the BWTR requirement is operationalised over the next two weeks. Your office will then receive weekly reporting highlighting the project progress and any risks and/or issues, as well as a weekly compliance dashboard.
12. It is likely that the monitoring and compliance approach outlined in this briefing could be readily adapted for a border workforce compulsory vaccination regime, once decisions are taken.

Recommendations

We recommend you:

- Note** that the mandatory testing regime and vaccination programme for our border workforce are key elements of the public health settings to prevent transmission across the border and into our communities **Noted**
- Note** that the requirement on PCBUs to use the BWTR comes into force on Tuesday 27 April and the Ministry is preparing for this and supporting PCBU's to comply **Noted**

- c) **Note** that to ensure that we are able to fully address the root causes of any potential compliance issues the Ministry is undertaking work to better understand compliance behaviour and barriers, including working with PCBUs to cleanse their data on the BTWR **Noted**
- d) **Note** that the Ministry has worked with the Ministry of Business, Innovation and Employment and Worksafe to develop a monitoring and compliance framework that is currently being operationalised to enable these agencies to identify and follow up potential non-compliance **Noted**
- e) **Note** that there is a Chief Executive-level Border Sector Governance Group (BSGG) to address key cross-agency border matters and a Border Testing Governance Group (BTGG) to provide system oversight, guidance and direction to border worker COVID-19 testing **Noted**
- f) **Note** that the Ministry is exploring saliva testing as one of the options to make testing easier and less invasive, including determining how saliva testing can interact with the current testing regime to provide a continuing level of assurance, while reducing the testing burden experienced by individuals **Noted**
- g) **Note** that we will provide further advice on options to enhance testing compliance through providing greater testing choice and less invasive testing methods, including saliva testing by 30 April 2021 **Noted**
- h) **Note** that your office will receive weekly reporting highlighting progress on the operationalisation of the BWTR requirement and any risks and/or issues, as well as a weekly compliance dashboard. **Noted**



Sue Gordon
Deputy Chief Executive
COVID-19 Health System Response

Date: 23-4-21



Hon Chris Hipkins
Minister for COVID-19 Response

Date: 27/4/2021

Enhancing compliance with the border workforce testing regime

Testing is a key element of our border protection settings

1. The Elimination Strategy underpins our current health response to COVID-19 and the "Keep it Out" pillar outlines the pre-border and at border settings to prevent the transmission into New Zealand from new arrivals. We aim to have strong and proportionate border settings that adapt as the health security settings shift.
2. The testing regime and vaccination programme for our border workforce are key elements of those public health settings to detect infection promptly and prevent transmission across the border and into our communities.
3. It is vital that we ensure compliance with the mandatory testing regime is maintained and where there is a decline in compliance rates, this is addressed and improved.

The Government has been concerned about compliance with testing requirements

4. We understand that Government has been concerned about compliance with the border worker testing regime. Indicative data and anecdotal reports indicate that there is dropping compliance.
5. Given the sustained length of time that testing will be required for border workers and the increased frequency of testing for some, there is a risk that compliance will continue to drop over time unless we intervene.

Mandatory use of the Border Worker Testing Register is the first step to improving compliance

6. The first step to address this was the requirement in the recent amendment to the COVID-19 Public Health Response (Required Testing) Order 2020 (the Required Testing Order), making use of the Border Worker Testing Register (BWTR) mandatory by Persons Conducting a Business or Undertaking (PCBUs).
7. On 14 April 2021, you signed the COVID-19 Public Health Response (Required Testing) Amendment Order 2021 which:
 - a. extends the requirement for mandatory testing and the frequency of testing for defined groups of border workers from Wednesday 21 April 2021
 - b. requires the mandatory use of the BWTR by all relevant PCBUs from Tuesday 27 April 2021.
8. The COVID-19 Public Health Response (Required Testing) Order 2020 (the Required Testing Order) sets out:
 - a. the duties for the relevant PCBUs to keep records of testing and medical examinations for their staff within the BWTR, to notify workers that they need to be tested, and to not prevent workers from accessing testing during working hours

- b. the obligation for the individual workers to be tested in accordance with the requirements for their group.
9. This requirement is part of shift the Ministry is making from the previous complaints-based compliance approach to an active monitoring and compliance regime to ensure compliance by both the PCBUs and border workers.

The Ministry is supporting PCBU's to comply with new requirements

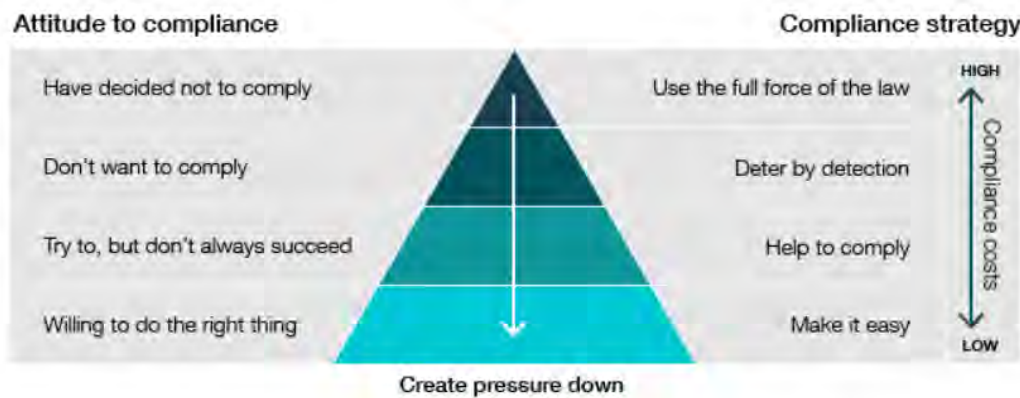
10. In advance of the mandatory requirement coming into force, the Ministry is currently:
- a. working with PCBUs already on the BWTR to ensure they use it as required and that their worker and testing data is accurate
 - b. working with the approximately 400 known PCBUs needing to move to the BWTR
 - c. liaising with border agencies and asking them to circulate information widely across their networks to attempt to reach presently unknown border related PCBUs covered by the Order so they are informed about the BWTR.

Understanding the root causes of compliance issues is key

11. To ensure that we are able to fully address the root causes of any potential compliance issues we are undertaking work to better understand compliance behaviour and barriers in relation to the testing regime.
12. To date, there has not been active monitoring and verification of the border workforce testing data. We are currently supporting PCBUs to undertake a cleanse of the data on the BTWR to ensure we have an accurate understanding of the extent of any current compliance issues and give us a clear baseline from which to improve.
13. Given the sustained length of time that testing will be required for border workers and the increased frequency of testing for some, there is a risk of declining compliance over time. Testing fatigue, complacency, and active resistance could undermine compliance.
14. To counter these risks, we are investigating and implementing measures to ensure ongoing and enhanced compliance across the testing regime. Overall the aim will be to ensure that there is a testing regime that is user-friendly, less burdensome, and there is support for workers and PCBUs to comply.

A framework will guide our approach to compliance

15. By looking across the areas and influencers on compliance and applying a framework to our approach we will ensure we are able to take effective actions to drive up compliance over time. The conceptual model is shown below:



16. We are building our work programme and approach from this model, as outlined below, however we are starting with a focus on ensuring the BWTR requirements are operationalised and exploring saliva testing as one of options to make testing easier and less invasive.

We are developing a multi-pronged approach to increasing compliance

17. We are developing a multi-pronged approach aligned with the compliance framework to implement measures to improve and maintain compliance across our testing regime more broadly. The workstreams within this approach include:
- a. **Putting a monitoring framework in place** to increase and maintain compliance with the testing regime through a strong base of education and information to PCBUs and individuals, escalating through warnings, to infringement and prosecution where necessary
 - b. **Increasing the visibility of compliance** through ongoing enhancements to the available databases and through ensuring, where appropriate, that the privacy and information sharing settings across these enable increased visibility of compliance and non-compliance
 - c. **Ensuring robust reporting** on compliance, to:
 - i. employers so that they have visibility of the status for their workers, meet their duties, and support their workers to also comply with their specific obligations
 - ii. you and your Ministerial colleagues and senior leaders across the All of Government COVID-19 response to provide assurance that the border workforce testing regime are being complied with to high levels
 - d. **Investigating ways to increase the available testing options**, including less invasive methods such as saliva testing
18. This suite of measures aims to ensure that PCBUs and border workers are fully informed of their duties and obligations and that there is maximum compliance with the mandatory testing regime.

We are investigating less invasive testing measure such as saliva testing to support greater compliance

19. We are particularly considering whether the use of less invasive testing measures can be part of our long-term approach to testing at the border, and what role saliva testing can

play in this. (Note, the recent amendment to the Required Testing Order added saliva testing to the available testing types).

20. Nasopharyngeal swabs are invasive, and concerns have been raised about the cumulative impact for workers who will be required to have sustained and long term mandatory testing. There is a risk that ongoing use of invasive testing methods could create testing reluctance or fatigue, and compliance with the testing regime could reduce given this.
21. Saliva PCR testing is considered less sensitive than nasopharyngeal swabs. However, advice from the New Zealand Microbiology Network and our epidemiologists, based on international and New Zealand-based validation data and research, is that increasing the frequency of testing will increase the overall sensitivity of the testing.
22. We are currently analysing options for how saliva PCR testing could be part of the current testing regime, while ensuring that we provide a continuing level of assurance, and potentially reducing the testing burden experienced by individuals.
23. Our analysis will take account of the scientific and technical data from both New Zealand and overseas about clinical effectiveness and impacts on compliance, the cost and economic implications, and our ability to implement. The current RFP process will inform a second stage of analysis.
24. Further advice on options to enhance testing compliance through providing greater testing choice and less invasive testing methods, including saliva testing will be provided by 30 April 2021.

We are establishing a fit for purpose monitoring framework

Moving to an active monitoring and compliance regime

25. Previously the Ministry had been operating a complaints-based compliance regime in respect of border worker testing. On 12 April 2021, you agreed that the Ministry would actively monitor and facilitate PCBU and worker compliance with the testing requirements.
26. The Ministry, supported by WorkSafe and the Ministry of Business, Innovation and Employment (MBIE), has worked on operationalising an active monitoring regime ahead of 27 April 2021, including:
 - a. confirming who will act as an enforcement officer, and the roles and responsibilities for the Ministry, MBIE and WorkSafe
 - b. establishing the relevant privacy and data settings to ensure active monitoring can take place
 - c. establishing a compliance enforcement approach through a risk-assessed, graduated, scalable response
 - d. developing monitoring functions to manage this process.
27. The BWTR will be the monitoring tool to support and provide the information for this approach.

Implementing a robust monitoring framework

28. The Ministry, supported by MBIE and WorkSafe, has developed a monitoring framework. The monitoring framework will target non-compliance on a case-by-case basis ranging

from an initial step of informing and educating, escalating to use of warnings, and then to more punitive enforcement actions (infringement notices).

29. MBIE will continue to take the lead in monitoring compliance across MIQFs and the Ministry will be the lead compliance monitoring agency in relation to aviation and maritime sectors at the border, as well as workers directly employed by MBIE such as immigration officers.
30. WorkSafe inspectors are currently authorised under section 18 of the COVID-19 Public Health Response Act 2020 to carry out the functions and powers of an enforcement officer with PCBUs and the Ministry is authorised as the enforcement officer for individual workers, and will continue in this role.
31. The Ministry will closely review the implementation of our new monitoring and compliance processes. We will make continuous business improvements where needed as the new process is bedded in. There will be an independent assessment of how the monitoring and compliance implementation has progressed two-three weeks after go-live. We will also review the resourcing requirements needed in the longer term, for the Ministry and also other agencies involved, once we have onboarded the PCBUs and embedded the new processes. As the monitoring framework is implemented and we gain a better understanding of the impact on individual and PCBU compliance, we will consider whether any further changes are recommended to be made to the Required Testing Order.
32. Officials across the three monitoring agencies will continue to review and assess situations where an individual fails or refuses to get tested and the interplay between the enforcement provisions of the Order, the Health & Safety at Work Act 2015 and contractual employment relations obligations between the PCBU and the employee. Further advice will be provided if additional measures are needed.

There will be increased and active monitoring

33. We do not anticipate that all PCBUs will have onboarded to the BWTR by 27 April due to the compressed timeframe for commencement. The Ministry is initially focusing on the ten larger PCBUs not previously using the BWTR to ensure that they are using the BWTR and to check the compliance of their workers and agents. It is expected these PCBUs will cover approximately 80-90% of workers who need to be put onto the BWTR.
34. The Ministry will endeavour to reach all known PCBUs required to be using the BWTR to ensure they are informed of and are meeting their obligations. It is anticipated that there will be a group of small PCBUs or sole traders who will only intermittently be active and required to undergo testing, and these may be harder to identify and to reach.
35. The initial reporting on the mandatory use of the BWTR will include:
 - a. a report following the data cleanse on the levels of compliance of the employees currently in the BWTR
 - b. weekly reporting to your office highlighting the project progress and any risks and/or issues
 - c. weekly dashboard on compliance across the border workforce
 - d. regular reporting on enforcement steps underway.

Leading through a graduated Compliance Framework to address and discourage non-compliance

36. Compliance activity will commence with known PCBUs who are not on the BWTR on 27 April with an education phase focused on following up with those PCBUs about their obligations and supporting them onto the register. It is expected that this education phase will be in place until 18 May, at which point a stricter enforcement response would be taken for any remaining PCBUs who are not on the BWTR.

We are taking action to increase the visibility of compliance

Ensuring existing data is accurate

37. Currently there are just over 100 PCBUs using the BWTR. The changes will mean that approximately 400 - 600 PCBUs (made up of approximately 20,000 individuals) will be subject to the requirement to use the BWTR. The majority of the PCBUs will be small or sole trader entities.
38. Prior to the data cleanse of the BWTR, the information generated indicates that more than 13,000 workers are compliant, but there is approximately 10% who have not complied with the testing or recording obligations. It is anticipated that a large portion of these will be records for workers who are inactive and therefore not required to be tested. Further there is likely to be incomplete records or examples where testing has occurred but the information has not been recorded correctly.
39. The Ministry has also conducted a monitoring pilot this week, calling a selection of PCBUs where the BWTR shows non-compliance to confirm the information and identify the cause.

Onboarding the new PCBUs

40. This week a number of PCBUs have made contact with the Ministry to work through the process to start their use of the BWTR. Information and links to the training videos have been provided to the PCBUs.
41. On 21 April 2021, email communication was sent to known PCBUs reminding them of the changes and outlining the steps to use the BWTR. Additionally, those already on the BWTR were asked to make sure all their data is correct and up to date.
42. In advance of 27 April 2021, the Ministry will:
 - a. on contact from a new PCBU, send relevant Fact Sheets, the Privacy Statement for the BWTR, sign on details, templates to assist with information uploads, and links to the guidance manual and instructional video
 - b. have a support team available over the long weekend in advance of the commencement, and will be in contact in subsequent weeks to check in with the PCBU and to address any technical issues that may arise.

Use of collected information

43. Mandatory use of the BWTR will enable the Ministry to close current testing information gaps through use of a single and standardised information system. It will also enable routine monitoring of:

- a. whether PCBUs are using the BWTR
 - b. the extent to which PCBUs are using the BWTR as required
 - c. the extent to which affected workers employed by PCBUs are meeting their testing obligations.
44. The mandatory nature of the BWTR will provide the PCBUs and monitoring parties with data that can be used to identify intermediate to long term worker non-compliance. It could also be used to identify patterns and trends of non-compliance by PCBUs and individual workers.

Monitoring and reporting of uptake and use of the Border Workforce Testing Register

45. In addition to the monitoring and reporting to Ministers and agencies as detailed above, it is expected that the proactive monitoring and communication with PCBUs will lift compliance. The monitoring processes will include follow ups with PCBUs to ensure that their workers are being tested when required, with an email notification going to PCBUs two days prior to the workers' scheduled due date. The Ministry is currently building a further notification to be sent one day after the due date if the test is not completed.
46. The Ministry will continue to review and refine the notification process once it has been implemented to ensure its ongoing effectiveness.

Interface between the Immunisation and Border Workforce Testing Registers

47. As part of the Immunisation Programme, the Ministry currently seeks express consent from border and MIQF workers to share their vaccination status with their employer/PCBU. Integration with the COVID-19 Immunisation Register (CIR) will allow greater analysis of the interactions between testing and vaccination.
48. From 22 April 2021, vaccination status went live in the BWTR. This will enable the testing monitoring and compliance framework to potentially be expanded for use in the vaccination programme.

Privacy Statement

49. The recent amendment to the Required Testing Order expressly states that the BWTR will be kept, maintained and monitored by the Ministry. Given the express inclusion of monitoring, the BWTR's existing Privacy Statement and Privacy Impact Assessment (PIA), are being updated to reflect the shift from the previous position where the BWTR was not used for monitoring and compliance purposes.
50. The Office of the Privacy Commissioner (OPC) is comfortable with the updated privacy statement allowing the Ministry to use the BWTR for monitoring purposes. This was included in the email communication to PCBUs on 21 April to share with employees ahead of the commencement of the new provisions.

Establishing, maintaining and monitoring border worker testing compliance is a cross-system piece of work

51. We have established a dedicated implementation team, including WorkSafe, to:

- a. develop and confirm the operational requirements for the monitoring and compliance approach to the testing regime as outlined above
 - b. ensure that there is cross-agency alignment regarding compliance and enforcement action
 - c. confirm individual agency roles and responsibilities.
52. As highlighted above, as the monitoring and compliance framework will be new, time will be needed to embed the processes and to refine them as necessary.
53. The Ministry will monitor the implementation and the resourcing required to ensure a strong and effective monitoring and compliance regime.
54. Decisions will need to be taken as to the ongoing role and responsibilities of agencies in relation to the compliance of PCBUs and for individuals, and the graduated compliance framework which will apply across both.
55. WorkSafe is working closely with the Ministry to support the development of the monitoring and compliance regime. WorkSafe will continue to act as the PCBU enforcement officer for the mandatory testing regime. WorkSafe's function of enforcing the COVID-19 legislation is currently being reviewed by MBIE, with advice being provided to the Minister of Workplace Relations and Safety about the organisation's COVID-19 enforcement role over the longer term. The Minister for Workplace Relations and Safety has indicated that he wants to keep WorkSafe's current contribution and potentially for this to be increased in some way.

Governance across the work programme

Border Sector Governance Group

56. The Border Sector Governance Group (BSGG) is the Chief Executive-level group that provides a forum for key cross-agency matters to be discussed and for decisions to be made on how agencies will progress work stream of common interest. This includes border worker and PCBU compliance with the COVID-19 Health Response (Required Testing) Order 2020.
57. The core BSGG comprises the Chief Executives from:
- a. Ministry of Business, Innovation and Employment
 - b. Ministry of Transport
 - c. New Zealand Customs Service
 - d. Ministry for Primary Industries.
58. Because of the need for an all of government approach to COVID-19, meetings are also attended by the Chief Executives or a delegated representative of the Ministry of Health, the Department of the Prime Minister and Cabinet and the New Zealand Defence Force.

Border Testing Governance Group

59. In September 2020 the Border Testing Governance Group (BTGG) was established to provide system oversight, guidance and direction to border worker COVID-19 testing. It also operates as a clearing house of issues and interests across agencies to ensure

alignment across government. BTGG meets fortnightly and on other occasions as required.

60. Membership of the BTGG is at Deputy Chief Executive / General Manager level from:
- a. Ministry of Health
 - b. Ministry of Business, Innovation and Employment
 - c. Ministry of Transport
 - d. New Zealand Customs Service
 - e. Ministry for Primary Industries
 - f. Maritime New Zealand
 - g. WorkSafe New Zealand
 - h. Department of the Prime Minister and Cabinet.

Equity

61. The impacts of COVID-19 fall very differentially across New Zealand communities. Māori and Pacific communities and those living with disabilities, in lower socio-economic groups and crowded or institutional settings bear a greater portion of both health and economic impacts and risks if there is an outbreak of COVID-19 in the community. The mandatory border worker testing regime has been a key part of the response to prevent the outbreak or spread of COVID-19 to the community, particularly those communities with many workers in border settings.

Next steps

62. Further advice on options to enhance testing compliance through providing greater testing choice and less invasive testing methods, including saliva testing will be provided by 30 April 2021.
63. Progress updates will be provided to your office as the monitoring and compliance framework is finalised and operationalised over the next two weeks.
64. Your office will then receive weekly reporting highlighting the project progress and any risks and/or issues as well as a weekly compliance dashboard.
65. It is proposed that this briefing be proactively released in accordance with the Official Information Act 1982.

ENDS.