



COVERSHEET

Minister	Hon Chris Hipkins	Portfolio	COVID 19 Response
Title of Cabinet paper	COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations (No 2) 2021: Authorisation for submission to Executive Council	Date to be published	29 October 2021

List of documents that have been proactively released

Date	Title	Author
July 2021	COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations (No 2) 2021: Authorisation for submission to Executive Council	Office of the Minister for COVID-19 Response
12 July 2021	Additional Item: COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations: Power to Act CAB-21-MIN-0284	Cabinet Office
9 August 2021	COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations (No 2) 2021 CAB-21-MIN-0303	Cabinet Office

Information redacted

YES / NO [select one]

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

In Confidence

Office of the Minister for COVID-19 Response

Cabinet, Legislation Committee

COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations (No2) 2021: Authorisation for submission to Executive Council

Proposal

- 1 This paper seeks authorisation for submission to Executive Council of the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations (No 2) 2021.

Background

- 2 On 9 July 2021, the Government announced that managed return flights from New South Wales (NSW) would start on 13 July 2021 for people who have been unable to return to New Zealand due to the pause of quarantine-free travel (QFT). Returnees must enter Managed Isolation and Quarantine (MIQ) for 14 days. The Government also announced that returnees will not be invoiced for their stay.
- 3 To give effect to those announcements, amendments are required to the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 (the Regulations).
- 4 On 12 July 2021 Cabinet noted that I was considering amendments to the Regulations to provide for a Ministerial waiver and refund of charges, and authorised me to take decisions on the proposed amendments so that the amendment Regulations could be drafted as soon as possible [CAB-21-MIN-0284 refers].
- 5 On 22 July 2021 Cabinet agreed to pause QFT to New Zealand from all states and territories in Australia from 23 July 2021 and to suspend QFT with the Commonwealth of Australia from 11.59pm on Friday 30 July 2021 [CAB-21-MIN-0288 refers]
- 6 Cabinet also agreed that once the suspension comes into effect, travellers on red flights from Australia will have to go into MIQ and will have to pay MIQ fees unless they could not secure a flight to return before 31 July 2021 despite best efforts [CAB-21-MIN-0288 refers]

Policy

Ministerial power to waive or refund MIQ charges

- 7 Section 32F of the COVID-19 Public Health Response Act 2020 (the Act) provides that regulations made under the Act may authorise the relevant Minister or the Chief Executive of the Ministry for Business Innovation and Employment (MBIE) to exempt, waive, or refund the whole or part of any prescribed charge, or defer the time for payment, in any particular case or any class or classes.
- 8 I propose the Regulations are amended to authorise the Minister responsible for COVID-19 Response to waive and refund MIQ charges for classes of persons.
- 9 I also propose that the Regulations require that this Ministerial power is limited to:
- 9.1 where border setting changes impose a new and temporary requirement for returnees to enter MIQ, or
 - 9.2 travellers from Australia, and
 - 9.3 the Minister considers such a waiver or refund appropriate.
- 10 This power would enable me to waive the MIQ charges for returnees affected by the recent pause to the QFT arrangements with NSW. When this cohort departed New Zealand they would not have expected to enter MIQ when they returned.
- 11 Regulations would also enable me to waive MIQ charges for any traveller from Australia. However I intend to use the power restrictively for eligible people who could not return to New Zealand despite their best efforts before the QFT arrangements were suspended on 30 July 2021. These specific conditions will be included in the gazette notice setting out the waiver.
- 12 The exercise of a discretionary power involves inherent risks in its consistent and fair use. I consider there will be appropriate safeguards in place by limiting the use of this power to criteria prescribed in the Regulations as outlined above in paragraph 9.
- 13 I propose that the Regulations require the publication of class of people that a waiver applies to in the gazette and on a publicly accessible internet site maintained by or on behalf of the New Zealand Government. I consider this to be an added level of transparency and accountability for the use of this power.

Removing the requirement to issue an invoice where the liability is waived

- 14 The Regulations currently require the Chief Executive of MBIE to issue an invoice to people for their MIQ stay even when their charges have been waived.

- 15 I propose to remove the technical requirement for an invoice to be issued where the amount of MIQ charges a person is liable to pay is zero.

Timing and 28-day rule'

- 16 A waiver of the 28-day rule is sought so the amendments to the Regulations can come into force on 10 August 2021 at 12.01 am. It is important that the charges should come into force as soon as possible to give effect to publically announced decisions.
- 17 The proposal to introduce a Ministerial power to waive MIQ charges for classes of people in certain circumstances only confers benefits on the New Zealand public. The other proposal in this paper is a minor technical change to the Regulations.
- 18 The public has been given notice since the announcement on 9 July 2021 that the changes will be commencing shortly.

Compliance

- 19 The Regulations comply with the:
- 19.1 principles of the Treaty of Waitangi;
 - 19.2 rights and freedoms contained in the New Zealand Bill of Rights Act (NZBORA) 1990 or the Human Rights Act 1993;
 - 19.3 principles and guidelines set out in the Privacy Act 1993;
 - 19.4 relevant international standards and obligations; and
 - 19.5 Legislation Guidelines (2018 edition).
- 20 The proposed amendments confer only benefits to the public (a discretion to waive fees in certain circumstances) and therefore do not have any adverse implications for the government's Treaty of Waitangi, NZBORA or Human Rights Act 1993 obligations.

Statutory prerequisites before making the Regulations

- 21 Section 32B and 32C of the Act require that before I can recommend making regulations which set charges for MIQ, I must be satisfied of the following matters:
- 21.1 The charges concerned relate to managed isolation or quarantine facility (MIQF) costs (including direct and indirect costs);
 - 21.2 the prescribed charges recover from any class of persons no more than an estimate of the actual and reasonable MIQF costs incurred in relation to that class (including both direct and indirect costs); and

- 21.3 there is appropriate provision to grant relief from the payment of the prescribed charges in circumstances where payment of the charges would cause undue financial hardship; and
- 21.4 the prescribed charges do not limit or are justified limits on the rights and freedoms in the New Zealand Bill of Rights Act 1990.
- 22 The proposed amendments relate to MIQF costs but do not change the level of prescribed charges (which themselves are set below the actual costs of MIQ, because they do not include costs of MBIE's partner agencies or other additional reasonable costs).
- 23 The proposed amendments will be an addition to the suite of levers in the fees regime designed to provide relief on undue financial hardship, compassionate or other grounds. As such, the proposed changes also do not negatively engage the right to freedom to enter New Zealand contained in s 18(2) NZBORA.
- 24 I am satisfied that the statutory prerequisites mentioned above are met.

Certification by Parliamentary Counsel

- 25 The draft regulations were certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet, subject to the following:
- 25.1 the statutory prerequisites relating to regulations in the COVID-19 Public Health Response Amendment Act 2020 are met; and
- 25.2 the granting of a waiver of the 28-day rule to allow the regulations to come into force on 10 August 2021.

Financial Implications

- 26 The proposals in this paper are likely to result in a reduction in MIQ costs recovered. The extent of the impact will depend on the number of people eligible for a particular waiver. As an example, a waiver of MIQ charges for the first cohort of travellers from NSW occupying 1000 rooms could reduce cost recovery by an estimated \$3.2 million (excluding GST).¹ At this stage it's difficult to estimate the impact on cost recovery by granting a waiver for people affected by the suspension of the QFT arrangements with the rest of Australia.

Impact Analysis

Regulatory Impact Statement

- 27 Treasury's Regulatory Impact Analysis team has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on

¹ This figure (\$3.2 million) is based on the assumption that; all returnees are either New Zealand citizens or residents; and of the 1000 rooms, 590 are shared by two adults, with the remaining 410 single occupancy; and all returnees would have been liable to pay MIQ charges if not for a waiver their MIQ charges.

the grounds that it is intended to manage the direct actions taken to protect the public in response to a declared emergency event. The proposal is required urgently to be effective (making a complete, robust and timely Regulatory Impact Statement unfeasible).

Publicity

- 28 The proposed amendments in this paper give effect to decisions that have already been announced publically by the Government.

Proactive Release

- 29 I intend to proactively release this Cabinet paper, excluding legally privileged material and subject to any redactions consistent with the Official Information Act 1982.

Consultation

- 30 The following Government agencies were consulted on the proposals in this paper; Te Puni Kōkiri the Ministry of Health, the Ministry for Primary Industries, the Ministry for Pacific Peoples, the Ministry of Foreign Affairs and Trade, the Ministry of Transport, the Ministry of Justice, The Treasury, Crown Law, New Zealand Customs Service and Department of the Prime Minister and Cabinet.
- 31 Internal consultation was undertaken with Immigration New Zealand and Immigration Policy.

Recommendations

I recommend that Cabinet:

- 1 **note** that on 9 July 2021, the Government announced managed return flights from New South Wales would start on 13 July 2021 for people who have been unable to return to New Zealand due to the pause of quarantine-free travel (QFT);
- 2 **note** that the Government also announced that returnees must enter Managed Isolation and Quarantine (MIQ) for 14 days and that they will not be invoiced;
- 3 **note** that to give effect to the government decisions, amendments to the COVID-19 Public Health (Managed Isolation and Quarantine Charges) Regulations 2020 (the Regulations) are required;
- 4 **note** that Cabinet authorised me to take decisions on the proposed amendments to the Regulations to provide for a Ministerial waiver and refund of MIQ charges so that the amendments can be drafted as soon as possible [CAB-21-MIN-0284];

IN CONFIDENCE

- 5 **note** that the Parliamentary Counsel Office has drafted amendments to the Regulations based on my decisions and that the draft Amendment Regulations are annexed (Annex 1);
- 6 **agree** to the following amendments to the Regulations contained in the draft Amendment Regulations:
 - 6.1 **agree** to provide for a Ministerial power to waive MIQ charges for classes of people in certain circumstances
 - 6.2 **agree** that the Ministerial power to waive MIQ charges is limited to :
 - 6.2.1 where border setting changes impose a new and temporary requirement for returnees to enter MIQ, or
 - 6.2.2 travellers from Australia, and
 - 6.2.3 the Minister considers such a waiver or refund appropriate
 - 6.3 **agree** that the Regulations require the waiver to be gazetted and published on a publicly accessible internet site maintained by or on behalf of the New Zealand Government when this power is exercised;
 - 6.4 **agree** to remove the requirement for the Chief Executive of the Ministry for Business Innovation and Employment to issue invoices where the amount of MIQ charges a person is liable to pay is zero;
- 7 **authorise** for submission to Executive Council the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations (No 2) 2021
- 8 **note** that a waiver of the 28-day rule to the amendments to the Regulations is sought:
 - 8.1 so the amendments can come into force on 10 August 2021 at 12.01am
 - 8.2 on the grounds that the fee waivers can be issued as soon as possible with respect to the recent returnees affected by the pause to the Quarantine Free Travel arrangements with New South Wales
 - 8.3 on the grounds that the changes are minor and confer only benefits to the public;

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9 **agree** to waive the 28 day rule to enable the Amendment Regulations to come into force on 10 August 2021 at 12.01am

Authorised for lodgement

Hon Chris Hipkins

Minister for COVID-19 Response

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Annex 1 Draft COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations (No2) 2021 Version 3.0

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