



BRIEFING

Managing requests for exemptions from standard managed isolation requirements

Date:	6 November 2020	Priority:	Urgent
Security classification:		Tracking number:	2021-1173 / 20201925

Action sought	Action sought	Deadline
Hon Chris Hipkins Minister for COVID-19 Response	Note New Zealand Rugby and the Vodafone Warriors have requested exemptions to managed isolation requirements under the Isolation and Quarantine Order	6 November 2020
Hon Andrew Little Minister of Health	Agree that officials write to New Zealand Rugby and the Vodafone Warriors officially declining their exemption requests; Note that Sport New Zealand and the MBIE Major Events branch are playing a liaison role with requestors in managing requests for exemptions from standard managed isolation requirements; Forward to the Minister for Sport and Recreation, Minister for Economic Development, and Minister of Immigration	

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Melleny Black	General Manager, Managed Isolation and Quarantine Policy Unit	Privacy of natural persons	✓
Dr Ashley Bloomfield	Director-General Ministry of Health		
Maree Roberts	Deputy Director-General System Strategy and Policy Ministry of Health		

The following departments/agencies have been consulted
Sport New Zealand, MBIE Immigration and Major Events

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <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 Withdrawn |

Comments



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Purpose

To seek agreement on how the process for managing requests for exemptions from standard managed isolation requirements for sport or cultural major events should apply to the urgent requests from the New Zealand All Blacks and Vodafone Warriors.

Executive summary

New Zealand Rugby and the Vodafone Warriors have made requests for exemption to standard MIF conditions

Officials have received a request from New Zealand Rugby for an exemption to allow the All Blacks to train during managed isolation when they return to New Zealand in mid-to-late November, and prior to some players starting pre-season training in mid-January for the 2021 Super Rugby championship.

The Vodafone Warriors have also made a request for an exemption for players returning in early January 2021 to facilitate training towards the upcoming Australian NRL 2021 season. The request also involves current players in New Zealand entering into managed isolation to join the group.

Exemptions to standard managed isolation requirements

The conditions under which New Zealanders¹ and non-New Zealanders are able to enter New Zealand and request exemptions to standard MIF conditions are set out in the Isolation and Quarantine Order. The Order sets out the pre-requisites for an exemption which include the requirement for an exemption to be linked to a government approved event or programme ('Major Event'). Appendix One lists the pre-requisites and shows the inter-relationship between Immigration and Exemption decisions.

Some training can also be facilitated without the need for an exemption.

The requests do not meet the pre-requisites for an exemption to the Isolation and Quarantine Order

Super Rugby, as a domestic competition, is not included in the list of Major Events. MBIE officials have informed New Zealand Rugby that its request is therefore unlikely to be approved.

The Australian NRL 2021 season also is not included in the list of Major Events.

Additionally, as Managed Isolation and Quarantine (MIQ) capacity is essentially fully allocated through the Christmas period, approval of the New Zealand Rugby and Vodafone Warriors requests would likely impact the availability of MIQ facility places for other New Zealanders and people with a confirmed MIAS² voucher. Approval of the requests would require some rooms to be left empty so that the teams' training bubbles would be separated from other guests.

¹ In this paper "New Zealanders" refers to: New Zealand citizens; New Zealand permanent residents; New Zealand resident visa holders who have already been in New Zealand and have a statutory right to travel here and apply for entry permission.

² Managed Isolation Allocation System

Accommodating the requests would also have significant precedent effects for similar requests.

Agreement is sought for officials to write to New Zealand Rugby and Vodafone Warriors officially declining their exemption requests and seeking to work with them to facilitate a level of training (e.g. in room, and access to gym equipment) that does not require an exemption.

Current approach to managing requests for an exemption to managed isolation

Our current approach involves people seeking an exemption from managed isolation requirements to engage with the relevant portfolio agency before making a request. For example Sport New Zealand has an important role to play in moderating expectations and supporting sports requestors to only put forward cases which will likely meet Health exemption criteria.

The cost of managing requests for exemptions to managed isolation requirements is high

The burden on the Health and MIQ systems can be reduced by actively managing stakeholder expectations and declining any clearly inappropriate requests at the earliest appropriate stage.

Requests for exemptions will not be pursued with Ministers if it is clear that the prerequisites in the Isolation and Quarantine Order are not met. Detail on the assessment of the three prerequisites is given in the body of this paper.

Our approach to managing exemption requests needs to be further refined

Looking forward, the approach to managing requests will need to be developed further once we have visibility of the likely pipeline of requests and engaged with wider agencies such as Ministry of Culture and Heritage. We will provide you with further advice. This will include the need to take a system-wide view, prioritisation of different requests relative to the needs of returning New Zealanders while ensuring the MIQ system remains robust, sequencing of advice on exemption and border exception decisions, and refining the role of agencies.

Recommended action

The Ministries of Business, Innovation and Employment, and Health recommend that you:

- a. **Note** officials have received requests from New Zealand Rugby and the Vodafone Warriors for exemptions to allow training during managed isolation between mid-November 2020 and early January 2021 in the build up to events not listed as a Major Event;

Noted

- b. **Note** the Minister of Health can make an exemption under clause 15A of the Isolation and Quarantine Order to vary standard managed isolation processes (e.g. to enable a sport team to train in larger bubbles) so long as, following receipt of advice from the Director-General of Health, the Minister of Health is satisfied that the following prerequisites are met:
 - a. the exemption (together with any conditions) is not inconsistent with the purpose of the Act; and
 - b. the exemption is necessary to facilitate a Government-approved event, or a major Government-approved programme, within the meaning of the relevant immigration instructions (i.e. a Major Event listed in Immigration Instructions); and
 - c. the extent of the exemption is not broader than is reasonably necessary to facilitate that event or programme.

Noted

- c. **Note** the requests do not meet the pre-requisite for an exemption as the teams are not entering New Zealand to participate in a Government-approved event or a major Government-approved programme;

Noted

- d. **Note** that as Managed Isolation and Quarantine (MIQ) facility capacity is essentially fully allocated through the Christmas period, approval of the New Zealand Rugby and Vodafone Warriors request would likely impact the availability of MIQ facility places for other New Zealanders and people with a confirmed MIAS voucher;

Noted

- e. **Agree** that officials write to New Zealand Rugby and the Vodafone Warriors officially declining their exemption requests, and seeking to work with them to facilitate a level of training (e.g. in room, and access to gym equipment) that does not require an exemption;

Agree / Disagree

- f. **Note** that Sport New Zealand and the MBIE Major Events branch are playing a role for exemptions from standard managed isolation requirements by liaising with requestors from their sectors, moderating expectations and supporting the requestor to put forward only cases which may meet Health exemption criteria;

Noted

- g. **Note** that we will provide you with further advice on the approach to managing requests once we have more information on the likely future pipeline of requests.

Noted



Melleny Black
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..... / /



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Deputy Director-General
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6 / 11 / 20

Hon Chris Hipkins
Minister for COVID-19 Response

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Hon Andrew Little
Minister of Health

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Background

1. Officials have received requests for exemptions to the Isolation and Quarantine Order from NZ Rugby for the All Blacks and the Vodafone Warriors. This briefing provides advice on those requests based on the framework for considering exemptions from managed isolation previously agreed by the Minister of Health. It also outlines the approach officials are taking to administering the framework, and some early lessons learnt.

Request for exemptions from New Zealand Rugby and the Vodafone Warriors

2. The All Blacks are returning to New Zealand in two groups: a smaller group of up to 15 people around 16 November 2020, and a larger group of up to 60 people on 29 November 2020. They have requested an exemption from the requirements of the Isolation and Quarantine Order to allow training in bubbles while they undergo managed isolation. The arrangements sought are very similar to that recently granted for the Wallabies, prior to the Bledisloe Cup (although for the smaller early group they have not requested the additional off-site training facility).
3. The All Blacks will not be participating in a Major Event following their period of managed isolation. However some players will start pre-season training in mid-January for the 2021 Super Rugby championship. Super Rugby, as a domestic competition, is not included in the list of Major Events.
4. The Vodafone Warriors have requested that players returning from Australia in early January receive an exemption from standard managed isolation requirements to train in bubbles with similar conditions to the Wallabies. In addition, the Vodafone Warriors have requested that players already in New Zealand join the team in managed isolation for the period so the team can train as a whole.
5. The Vodafone Warriors have outlined a counterfactual where the New Zealand players would have to go to Australia on January 4 to train with their Australian-based players together as a squad. Therefore a training dispensation using New Zealand managed isolation facilities would enable New Zealand-based players time with their family until late February without compromising the build up to the Australian National Rugby League (NRL) 2021 season.

The need for an exemption to standard managed isolation requirements

6. The COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 (the Isolation and Quarantine Order) sets out the requirements for people who must be isolated or quarantined, including on arrival in New Zealand. Clause 8 of the Isolation and Quarantine Order states that a person in managed isolation must remain in their room, with limited exceptions, e.g. for exercise or to access medical services.
7. However, clause 15A provides that the Minister of Health may exempt any class of relevant persons from the requirement to comply with any provision of the Isolation and Quarantine Order. An exemption can be used to vary the standard MIF process (e.g. to enable a sports team to train in larger bubbles) so long as, following receipt of advice from the Director-General of Health, the Minister of Health is satisfied that three prerequisites are met (see paragraph 14).

Some flexibility exists to cater to guests' needs without an exemption

8. Some changes can be accommodated within standard MIF arrangements without a health exemption. MBIE MIQ Operations teams work to address guests' needs, including needs related to participation in sporting or cultural events. Depending on circumstances, suitable exercise or other equipment may enable some guests to prepare for their event safely while

in managed isolation. Where possible this is preferable to an exemption, as exemptions to MIF arrangements may increase health risks and are costly (discussed below).

9. Changes that do not require a health exemption are outside the scope of this paper and are addressed operationally. This paper focusses on the situations where, to enable a Major Event to proceed, substantive changes to MIQ arrangements are needed, requiring an exemption, e.g. to allow larger bubble sizes or training off-site.

Approach to assessment of requests for exemptions to standard managed isolation requirements

10. The main elements of the approach taken for government decisions on exemptions to standard managed isolations are:
 - a. Immigration decisions - there are different process requirements for non-New Zealanders and New Zealanders. Immigration requirements relate primarily to non-New Zealanders (see Appendix One for further detail).
 - b. Health exemption criteria - the prerequisites specified in clause 15A of the Isolation and Quarantine Order provide overarching criteria for the granting of exemptions which are consistent with the COVID-19 Public Health Response Act 2020 (the Act), necessary to facilitate a Government-approved Major Event, and no broader than necessary to facilitate that event
 - c. Organisational roles – the process of deciding whether events can proceed, clear roles between agencies, and clear communication and expectation management with stakeholders. It is important that sports and cultural groups seeking an exemption to managed isolation conditions know where to make a request and that decision criteria are transparent. There is a role for portfolio agencies such as Sport NZ to liaise with these groups.

Consideration of requests for an exemption

We are still developing the process by which exemptions will be received and considered. However, consistent with the Border Exceptions process in the immigration portfolio, Sport New Zealand has played an important role to date in liaising with sports groups, moderating expectations and supporting the requestor to put forward only cases which may meet the pre-requisites in the Isolation and Quarantine order. While consultation will be required, we see this as a likely model for working with other sectors. *The Ministry of Health prepares advice to Minister of Health in consultation with MIQ and relevant agencies*

11. Exemptions to managed isolation conditions are decided by the Minister of Health. As the circumstance of each request are unique the exact process for developing advice will be determined by officials on a case-by-case basis. There is a requirement for the Minister of Health to consult with the Minister responsible for MIQ in order to understand relevant considerations such as whether any exemption can reasonably be implemented by MIQ.
12. In advising the Minister responsible for MIQ on whether an exemption can reasonably be implemented, MIQ officials intend to consider factors such as:
 - the cost of the arrangements (such as training facilities, transport to these) requested, and whether there is adequate funding from either the requesting organisation or the Crown to meet the costs
 - occupancy-level related pressures, including whether the arrangements requested would disproportionately impact on the ability of the MIQ system to accommodate and provide facilities to others seeking to enter NZ at the same time

- requirements to develop new operating protocols and arrangements – novel requests are likely to need a longer lead in time and more MIQ staff capacity to implement
- ability of MIQ to meet any conditions likely to be imposed as part of the exemption decision that impact on MIQ (e.g. capacity of health and security staff, additional infection prevention and control requirements).

13. Experience to date suggests that those seeking exemptions from standard MIF conditions will often seek what they consider ideal, but be willing to moderate requests if necessary to gain support from MIQ and the Ministry of Health for the exemption. This can lead to a situation of ongoing negotiation and discussion between the requesting party and government agencies, which can be time consuming and costly.

The three prerequisites for the exemption: considerations

14. A request may be approved if the requested exemption meets the three prerequisites, that the exemption:

- is not inconsistent with the purpose of the Act; and
- is necessary to facilitate a Major Event listed in the immigration instructions; and
- is not broader than is reasonably necessary to facilitate that event or programme.

The exemption sought is not inconsistent with the purpose of the Act

15. Consistency with the purpose of the Act is assessed with regard to the Act's purpose at section 4. The main factors to consider are any impacts the proposed exemption may have on the public health response to COVID-19, with regard to:

- the risk of transmission of COVID-19 to the community* - it may be appropriate to consider matters such as: any conditions associated with the proposed exemption; risk of exposure to COVID-19 prior to arriving in New Zealand, including any testing measures in place overseas; transit risks (e.g. commercial versus charter flights); any impacts on MIQF capacity (some exemptions may impact how many people can be housed in MIQFs); workforce capacity; any additional measures proposed to manage health risks in New Zealand, such as infection prevention and control measures; and the likelihood that any conditions will be complied with.
- the social, economic, and other benefits that may result from the granting of the exemption* – the community benefits of the event proceeding.
- economic sustainability and the existence of any cost recovery measures for MIQF costs* – the marginal costs of implementing the exemption and any amounts expected to be cost recovered for the health and MIQ systems.
- enforceable measures, in addition to the relevant voluntary measures and public health and other guidance that also support that response* – the likelihood that conditions of the exemption will be complied with.

The exemption sought is necessary to facilitate a Major Event listed in the Immigration Instructions

16. The event will need to be included in the list of Major Events in Immigration Instructions or the Minister of Immigration will need to have agreed to it being added. This is an important criterion, as it is the ability to host major events in New Zealand that gives rise to the economic and social benefits that may justify an exemption.

The extent of the exemption is not broader than is reasonably necessary to facilitate that event or programme

17. The exemption must be strongly aligned to the event. For example, all elements of the exemption are required for the event to go ahead.

Additional considerations for non-New Zealanders

18. The health exemption process is as above, with additional consideration given to the potential impact of the arrival of non-New Zealanders on the legal right of New Zealanders to cross the border.
19. Any exemption must be exercised consistently with the New Zealand Bill of Rights Act and the Immigration Act as these acts create the legal right for New Zealanders to cross the border into the country.
20. An exemption has potential to impact on the freedom of movement of New Zealanders, by displacement if there is insufficient capacity at MIQFs to accommodate both groups of people.

Our approach to managing exemption requests needs to be further refined

We have learnt from the exemptions process for the Wallabies, English Roses and the West Indies Cricket team.

21. Officials have learnt a significant amount from experience managing requests for exemptions for many sporting teams and events, including the Wallabies, English Roses and the West Indies Cricket teams who have to-date been successful in obtaining an exemption.
22. As a result, the approach to managing requests needs to be developed further once we have visibility of the likely pipeline of requests and engaged with wider agencies such as Ministry of Culture and Heritage. This will include the need to take a system-wide view, prioritisation of different requests relative to the needs of returning New Zealanders while ensuring the MIQ system remains robust, sequencing of advice on exemption and border exception decisions, and refining the role of agencies.
23. It is intended that decision criteria would be made publicly available so that portfolio agencies such as Sport New Zealand can be the first point of contact for sector groups to manage expectations and support them to put through credible proposals.
24. Ministerial announcements can be considered on a case-by-case basis following individual decisions on the immigration and exemption decisions necessary to allow an event to proceed, or this could be left to the codes and portfolio agencies.

Consideration of the exemption request from the All Blacks when entering New Zealand in November 2020

Proposal does not involve a Major Event

25. The All Blacks are returning to New Zealand for their off season and not for a Major Event. The provisions of the Isolation and Quarantine Order only allow the Minister of Health to consider an exemption to managed isolation arrangements where the person is an essential participant in a Major Event included in the Immigration Instructions. On this basis MBIE officials have indicated to New Zealand Rugby that their request is unlikely to be approved
26. As MIQ facility capacity is essentially fully allocated over the Christmas period, approval of the New Zealand Rugby request would likely impact the availability of MIQ facility places for other New Zealanders and people with a confirmed MIAS voucher. This is because accommodating the request would require some rooms to be left empty so that the All Blacks' training bubble can be separated from other guests.

Operational considerations and potential impact on returning New Zealanders

27. The All Blacks are scheduled to return to New Zealand and go into MIQ during a period where MIQ will be at full capacity. This means that a similar solution to the Wallabies will be difficult to achieve safely, and would mean that trade-offs would need to be made in order for their request to be operationalised.
28. Considerably more resources were required to manage the Wallabies managed isolation arrangements safely than was originally anticipated. This included additional security measures for the training facility, additional secure transport to and from the training facility, additional health resource, additional cleaning and logistics to support the MIF gym, as well as an increase in the day-to-day MIF functions (such as meal preparation, laundry and responding to ad hoc team requests).
29. At the time that the Wallabies were in isolation, MIQ was at approximately 70 per cent capacity which meant we were able to maximise existing resources to support the delivery. During the period before Christmas, where we will be at 100 per cent capacity, our staff will be required to support general MIQ full-time. Our system is designed to work effectively at 100 per cent capacity but sport or training-enabled MIQ would be above and beyond that and would require additional workforce that we currently do not have access to. The health workforce is already stretched to capacity and we would find it almost impossible to source the significant health workforce required to support such a request.
30. In addition, a full wing of the MIF had to be dedicated to the team in order to manage their movements appropriately. This meant that 75 rooms were required for 66 people. This was required to facilitate movements within the MIF safely for activities like gym usage. During that period, MIQ was not at capacity, and the MIF utilised did not have any other returnees, which meant that this could be managed with minimal impact to the wider MIQ system. As the All Blacks will return while MIQ is at capacity, this type of arrangement will not be possible without specifically displacing other returning New Zealanders.
31. Some training could be supported within the existing MIQ parameters (without the need for an exemption). These types of solutions have been provided to other returning athletes to support their training requirements. This could include in-room training equipment and specially allocated time in the exercise areas.
32. Agreement is sought for officials from MBIE to write to New Zealand Rugby officially declining its exemption request and seeking to work with them on training arrangements that do not require an exemption.

Consideration of the request from the Vodafone Warriors when entering New Zealand in early January 2021

33. The Vodafone Warriors request has similar issues to the All Blacks request. The Australian NRL is not a Major Event, and the request risks displacing returning New Zealanders during a heavily subscribed period. Sport NZ has already indicated to the Vodafone Warriors that the request is unlikely to be successful.
34. Agreement is sought for officials to write to the Vodafone Warriors officially declining its exemption request and seeking to work with it on training arrangements that do not require an exemption.

Risks

35. Approving the All Blacks' and Vodafone Warriors' exemption requests would create a significant precedent in terms of the Government's approach to prioritisation of the different demands on the MIQ system. Further policy consideration of the balancing of these

competing demands and the prioritisation approach to the likely pipeline of requests is required. Approving this request will pre-empt and potentially pre-determine this work.

36. With the MIAS system in place and the new legal requirement for a voucher prior to travelling to New Zealand, MIQ occupancy levels may be higher than they have been historically. This may make it more difficult to safely implement arrangements for sports codes in the future. It may also impact on our ability to accommodate and meet the needs of New Zealanders who wish to return home.

Next Steps

37. Subject to your agreement, officials will write to New Zealand Rugby and the Vodafone Warriors officially declining their exemption requests.
38. We will provide you with further advice on the approach to managing requests and an approach for prioritisation of different calls on the MIQ system (ie different types of exemption requests, and the impact of exemption requests on the needs of NZers to return home) once we have more information on the likely pipeline of requests.

Appendix One: Inter-relationship between Immigration and Exemption decisions

Table one: Inter-relationship between Immigration and Exemption decisions

	Immigration	Exemption to standard MIF conditions (for all requestors)
New Zealander	Citizens and residence class visa holders have a legal right to enter New Zealand regardless of reason for entry	<p>An exemption may be granted to standard managed Isolation conditions, if this is necessary to enable the person to participate in a major event.</p> <p>The decision is made by the Minister of Health, with input from the Director General of Health. All three of the prerequisites must be met:³</p> <ol style="list-style-type: none"> 1. the exemption and any conditions is not inconsistent with the Act; and 2. the exemption is necessary to facilitate a Major Event listed in relevant immigration instructions; and 3. the extent of the exemption is not broader than is reasonably necessary to facilitate the major event.
Non-New Zealander	<p>New Zealand's border is closed. An exception to this may be made if the person is assessed by Immigration New Zealand as meeting the criteria of a "critical worker", that is, undertaking time-critical role and have unique skills/experience or the work of significant benefit. Critical workers can also be approved by virtue of being a worker/participant in a Government-approved event ('Major Event'), a major Government-approved programme, or major infrastructure project (all of which are approved by Government and listed in Immigration Instructions). The participant must be essential to the event proceeding.</p> <p>Major Events are decided by the Border Exceptions Ministers Group⁴. Considerations include:</p> <ol style="list-style-type: none"> 1. the economic and social benefits that may accrue from the event; 2. MIQ capacity and the ability of the system to meet the event's managed isolation requirements; and 3. the potential impacts on New Zealanders' legal right to cross the border. <p>If approved, the Minister of Immigration adds the event to the list of Major Events in Immigration Instructions.</p> <p>Dependents and partners of critical workers can also be granted a border exception.</p>	

³ Clause 15A, COVID-19 Public Health Response (Isolation and Quarantine) Order 2020.

⁴ In the previous term of Government this group was led by the Minister of Immigration and also comprised the Ministers of Housing, Health, Economic Development and Internal Affairs. It is expected that membership may change, at a minimum to include the Minister for COVID-19 Response and the Associate Minister of Finance.