



BRIEFING

Draft COVID-19 Public Health Response Amendment Bill: MIQ Group allocations

Date:	28 June 2021	Priority:	Medium
Security classification:		Tracking number:	2021-4244

Action sought		
	Action sought	Deadline
Hon Chris Hipkins Minister for COVID-19 Response	Agree to amend the legislative provisions for the offline allocation of groups as part of the draft COVID-19 Public Health Response Amendment Bill so that they better reflect the existing process.	5 July 2021

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Kara Isaac	General Manager, MIQ Policy	Privacy of natural persons	
Privacy of natural persons	Manager, Allocation and Supply Policy, MIQ		✓
	Policy Advisor		

The following departments/agencies have been consulted
Ministry of Health

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments



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Purpose

To seek your agreement to amend the legislative provisions for 'group' offline allocations as part of the draft COVID-19 Public Health Response Amendment Bill so that it better reflects the existing process.

Recommended action

The Ministry of Business, Innovation and Employment (MBIE) recommends that you:

- a **Note** that on 17 May 2021 Cabinet agreed that the draft COVID-19 Public Health Response Amendment Bill should enable "offline allocations [to] either be made by the Minister for COVID-19 Response or by the Chief Executive of MBIE in accordance with criteria decided by the Minister for COVID-19 Response [SWC-21-Min-0067, CAB-21-MIN-0167 refer]"
- Noted*
- b **Note** that Cabinet also authorised you "to make any necessary policy decisions that may arise during the drafting process, consistent with the policy intentions agreed [by Cabinet]"
- Noted*
- c **Agree** that for group offline allocations the:
- a. Minister for COVID-19 Response sets the eligibility criteria for group allocations
 - b. Minister for COVID-19 Response decides group applications in accordance with that criteria (in practice, this is delegated to the group of Border Ministers)
 - c. Chief Executive of MBIE must publish the eligibility criteria for group allocations and approved group allocation decisions on the MBIE website.
- Agree / Disagree
- d **Note** that the process for non-group offline allocations will not change (the Chief Executive of MBIE will make those decisions in accordance with criteria set by the Minister for COVID-19 Response and publish criteria on the MBIE website).
- Agree / Disagree
- e **Direct** officials to issue instructions to the Parliamentary Counsel Office to give effect to the decision in paragraph c in the COVID-19 Public Health Response Amendment Bill
- Yes / No

f **Agree** to proactively release this briefing with appropriate redactions consistent with the *Official Information Act 1986* once the COVID-19 Public Health Response Amendment Bill has been introduced to the House

Agree / Disagree



Kara Isaac
General Manager, Policy
Managed Isolation and Quarantine, MBIE

28.6.21



Hon Chris Hipkins
Minister for COVID-19 Response

29.6.2021

Background

1. Allocation of spaces in Managed Isolation or Quarantine (MIQ) operated without an explicit legislative basis until 9 April 2021. On that date, the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 (IQO) was amended to include a framework for the management of MIQF allocations, establishing two types:
 - a. online allocations (automated and first-in, first-served)
 - b. offline allocation (manually allocated by a decision maker).
2. On 17 May, Cabinet agreed to shift that framework to primary legislation as part of the proposed COVID-19 Public Health Response Amendment Bill (the Bill) [SWC-21-Min-0067, CAB-21-MIN-0167 refer]. Cabinet agreed that the Chief Executive of MBIE or the Minister for COVID-19 Response could make decisions on offline allocations. Further clarity was provided in the body of the paper, which stated that you intended to better reflect the existing group allocation process where the Border Exemptions Ministers make the decisions on group allocations.
3. Cabinet also authorised you, as Minister for COVID-19 Response, to make necessary policy decisions that arise during the drafting process that are consistent with the policy intentions agreed by the Cabinet Social Wellbeing Committee (SWC).

The group allocations process could be better reflected in the provisions

The existing provisions do not reflect the nature of group decisions or the most appropriate decision-maker

4. There are several elements to the allocation provisions that apply to both online and offline allocations. You determine the apportionment between the online and offline allocations and the Chief Executive of MBIE has an administrative power to amend or cancel allocations.
5. In addition, there are three elements in the IQO specific to offline allocations ([see clause 15L](#)):
 - a. You decide the criteria by which applications for offline allocations must be decided.
 - b. The Chief Executive of MBIE publishes those criteria on the MBIE website.
 - c. The Chief Executive of MBIE makes decisions on applications for allocations, based on the established criteria.
6. For offline allocations such as the 'time sensitive' category or its use for maritime crew, this framework functions as intended and allows for a clear distinction between the decision maker and who establishes the criteria.
7. However, the practical administration of the 'group' category does not align so well with these provisions. The group category has been established to provide for groups that would bring significant social or economic benefit to New Zealand and for whom online allocation is not appropriate. Decisions also often involve trade-offs across portfolios and government interests. This means the Chief Executive of MBIE is not always the most appropriate decision maker.

8. You have agreed to a practice whereby decisions are made by the Border Exceptions Ministerial Group¹, based on advice from a cross-agency group of officials [briefing 2021-3639 refers]. The drafting of the Bill provides an opportunity to ensure the provisions better reflect this process.

In amending the framework, it is important to retain transparency, accountability and flexibility

9. The current legislative framework is transparent and flexible and ensures accountability. Responsibility is clearly divided between you and the Chief Executive of MBIE, people can see the criteria by which decisions are made and there is limited prescription in the legislation.
10. In addition to accurately reflecting the existing process, we have sought to retain these characteristics as much as possible while redesigning the legislative provisions that underpin offline allocations. This will provide certainty for decision makers, those affected by them and the general public.

We propose to clarify the decision maker for group applications in the draft Bill and introduce new publication requirements

Recommended process

11. To ensure the framework for the offline allocation of groups appropriately reflects the process in practice and the nature of the decisions, we propose that the Bill establish the following responsibilities (underline denotes a change from the existing policy):

Responsibility	General offline allocations (ie not groups)	Group offline allocations
Establishes criteria for allocation, <u>including eligibility criteria for group allocations</u>	Minister for COVID-19 Response	
Makes decision on application	Chief Executive of MBIE	<u>Minister for COVID-19 Response</u>
Publishes criteria, <u>including eligibility criteria for group allocations, on the MBIE website</u>	Chief Executive of MBIE	
<u>Publishes approved applications on the MBIE website</u>	Not applicable (not published for privacy reasons)	<u>Chief Executive of MBIE</u>

12. These provisions will allow you to continue to delegate group application decisions to the Border Exceptions Ministerial Group. This is the preferred option for the following reasons:
- It is clear on the decision maker for non-group decisions, distinguishing between group and general offline allocations. This is transparent, administratively simple and ensures accountability of decision making.
 - Publishing the eligibility criteria to be considered for the 'group' allocations and approved applications helps with transparency and accountability. This is particularly important as under this proposal the legislation establishes the Minister as the person who both sets the eligibility criteria and makes the decisions (acknowledging that this

¹ The Border Exceptions Ministerial Group consists of the Immigration, COVID-19 Response, Research, Science and Innovation, Social Development and Employment, Economic and Regional Development and Maori Development Ministers.

will then be delegated). Publication adds an additional statutory safeguard on the exercise of this power.

- c. It retains simplicity and flexibility in primary legislation.
13. As the Chief Executive of MBIE is responsible for ensuring that the number of confirmed allocations does not exceed the number of available allocations, it will be important from an accountability perspective to ensure that your decisions on group applications take into account the number of available allocations.
 14. You have set the number of rooms available in the group allocation at 400 per fortnight. Officials use this constraint when preparing group packages and making recommendations to you to ensure group allocations do not exceed what can be safely accommodated.

Alternative, not recommended, processes

15. We considered two alternative approaches to decision making, but for transparency and flexibility reasons do not recommend these:
 - a. **A referral power:** The Chief Executive of MBIE could remain primary decision maker for offline allocations, but could refer decisions on group applications to you. This option was more complex from an administrative standpoint, and was less transparent.
 - b. **Describe groups in the Bill:** The Bill could include a definition of a group, and then distinguish between general offline allocations (decided by the Chief Executive of MBIE), and group offline allocations (decided by you). This option would not provide the durability or flexibility required in relation to the group allocation process.

Next steps

16. If you agree to the recommendations of this briefing, MBIE and the Ministry of Health will issue drafting instructions to the Parliamentary Counsel Office to reflect this policy in the Bill.
17. Officials will continue drafting other elements of the COVID-19 Public Health Response Amendment Bill in order to meet the timeframes for the Bill. Note we are intending to seek approval to introduce the Bill directly from Cabinet on 2 August 2021.
18. We also intend to brief you on potential changes to the Chief Executive's power to amend or cancel confirmed allocations this week [expected in briefing 2021-4183].