



BRIEFING

Draft Cabinet paper: Amendments to the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020

Date:	2 August 2021	Priority:	Medium
Security classification:		Tracking number:	2122-0285

Action sought		
	Action sought	Deadline
Hon Chris Hipkins Minister for COVID-19 Response	<p>Note that you have agreed to progress a number of minor and technical changes to the MIQ Charges Regulations</p> <p>Agree to a further amendment to clarify the definition of a critical worker's supporting agency to better reflect the original policy intent</p> <p>Agree to the proposed criteria for exercising the Ministerial power to exempt classes of people from MIQ charges in certain circumstances</p>	4 August 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	Policy Manager, System and Strategy, MIQ	Privacy of natural persons	
	Policy Advisor, System and Strategy, MIQ		

The following departments/agencies have been consulted
The Ministry of Foreign Affairs and Trade, Ministry of Health, The Treasury, Immigration New Zealand, the Ministry of Transport, New Zealand Customs Service, Department of the Prime Minister and Cabinet, Ministry of Justice, Crown Law, Te Puni Kokiri, The Ministry for Pacific Peoples

- 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 Withdrawn |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



BRIEFING

Draft Cabinet paper: Minor and technical changes to the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020

Date:	2 August 2021	Priority:	Medium
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Purpose

To seek your agreement to two additional amendments to the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 (the Regulations) to be progressed as part of the changes from the MIQ fees regime review and provide you with a draft Cabinet paper on proposals for consultation with your Ministerial colleagues.

Recommended action

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

- a **Note** that you have agreed to progress a number of changes to the MIQ fees regime which require amendments to the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 (the Regulations);

Noted

- b **Note** that we undertook to provide you with advice on the criteria for a new Ministerial exemption power for classes of people from MIQ charges in certain circumstances;

Noted

- c **Agree** to the following criteria for exercising the new Ministerial exemption power:

- i. To assist with a national emergency; or

Agree / Disagree

- ii. To respond to a nationally significant event; and

Agree / Disagree

- iii. The Minister deems such an exemption appropriate.

Agree / Disagree

- d **Agree** that the Ministerial exemption power will not apply to people travelling for business or entertainment events;

Agree / Disagree

- e **Note** that you have separately agreed to amend the Regulations to introduce a new Ministerial waiver power in response to the New South Wales managed return situation [NSW-006 refers];

Noted

- f **Agree** that Ministerial exemptions be gazetted and published on a publicly accessible internet site maintained by or on behalf of the New Zealand Government;

Agree / Disagree

g **Agree** to a further minor and technical change to the Regulations to clarify the definition of the term 'supporting agency' in the Regulations to reflect the original policy intent in relation to 'other critical workers';

Agree / Disagree

h **Agree** to seek Cabinet approval for a delegated authority to make decisions on invoicing 'other critical workers' who do not have a 'supporting agency' within New Zealand, following further advice from MBIE;

Agree / Disagree

i **Note** the attached draft Cabinet paper, which seeks Cabinet approval on decisions you have already taken and those proposed in this paper, for consultation with your Ministerial colleagues; and

Noted

j **Agree** that this briefing will be proactively released with appropriate redactions consistent with withholding grounds under the Official Information Act 1982.

Agree / Disagree



Kara Isaac
**General Manager,
MIQ Policy, MBIE**

28 / 08 / 21



Hon Chris Hipkins
Minister for COVID-19 Response

11 / 08 / 2021

Background

1. MBIE has undertaken a review of the Managed Isolation and Quarantine (MIQ) charges system to ensure the settings remain fit for purpose and align with Government objectives. As a result we identified opportunities to simplify and streamline the cost recovery system.
2. On 5 May 2021 [briefing 2021-3261 refers] and on 22 June 2021 [briefing 2021-3765 refers] you agreed to progress the following minor and technical changes to the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 (the Regulations) to:
 - i. Enable MBIE to issue invoices any time after a person enters MIQ (under current settings invoices can only be issued on or after the date a person leaves MIQ);
 - ii. Enable MBIE to charge fees to families on the basis of their travel group as registered in the Managed Isolation Allocation System (MIAS), irrespective of how many rooms they occupy;
 - iii. Provide for a 'family travel group' to consist of up to 12 people (the maximum number of people who can book as a group in MIAS);
 - iv. Amend the definition of 'family member' to include 'any person who shares a legal or biological relationship or who is whānau or another culturally recognised family group';
 - v. Amend the regulations to remove the requirement to send an invoice even when a fee waiver has been granted;
 - vi. Amend fees exemption for caregivers so that all caregivers entering MIQ are exempt from fees, regardless of whether the person they are entering to care for is liable or not;
 - vii. Amend the fees exemption for deportees so that it applies to all persons who are entering New Zealand after being deported for the first time, rather than just those from Australia;
 - viii. Introduce a new fees exemption for people who have been extradited to New Zealand;
 - ix. Amend the fees exemption for people entering New Zealand after, or as part of a, medical air transfer, so that it also covers people who have entered as part of medical referrals and medical evacuations;
 - x. Amend the fees exemption for people who have travelled to New Zealand to receive medical treatment under the New Zealand Medical Treatment Scheme so that it also covers those who are receiving treatment under the Samoan Health Partnership;
 - xi. Amend the fees exemption for New Zealand citizens returning to the Cook Islands, Niue, or Tokelau for more than 180 days, to ensure that it correctly mirrors the liability settings of New Zealand citizens returning to New Zealand;
 - xii. Remove the fees exemption for people who enter New Zealand for the purpose of attending the Christchurch mosque sentencing, as this event has taken place;
 - xiii. Amend the regulations to introduce a power for you to exempt classes of people from MIQ charges in certain circumstances, and that Regulations will prescribe criteria for exercising this power to ensure consistent and equitable approach to exemptions; and

- xiv. Amend the regulations to define the 'first person in a room' as the adult who would be charged the least, for consistency and the avoidance of doubt.
3. On 14 July 2021, you agreed that the fees exemption for diplomats, which is currently specified in section 32E (2) (a) to (e) of the COVID-19 Public Health Response Act 2020 (the Act), be moved to the Regulations so that all exemptions sit in one place [briefing 2122-0093 refers].
4. This briefing recommends a further minor and technical change to the Regulations as well as criteria for exercising the new Ministerial power to exempt classes of people from MIQ charges.

Ministerial power to exempt classes of people from MIQ charges

5. Section 32F (2) of the Act provides that the Regulations relating to cost recovery may authorise the relevant Minister, or Chief Executive of 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 of cases (and may or may not prescribe criteria to be applied in doing so).
6. As part of this fees review, you agreed to amend the Regulations to provide for a Ministerial power to exempt classes of people from MIQ charges in certain circumstances, and that the Regulations will prescribe criteria for exercising this power to ensure consistent and equitable approach to exemptions [briefing 2021-3765 refers].
7. On 9 July 2021, you agreed to further amend the Regulations to create a new Ministerial waiver and refund power in response to the New South Wales managed return situation [NSW 001 and NSW 006 refer]. On 9 August 2021, you are taking proposals to Cabinet relating to this power. Once Cabinet has approved that power, we will provide you with advice relating to the class.

Proposed criteria

8. We recommend that the Ministerial power to exempt MIQ charges for classes of people should apply only to people entering New Zealand:
 - To assist with a national emergency; or
 - To respond to a nationally significant event; and
 - The Minister deems such an exemption appropriate.
9. Under the proposed criteria the Ministerial exemption power could be used if people enter New Zealand as part of an emergency response and they are still required to go through some form of MIQ or a situation similar to the Christchurch Mosque attack or Whakaari White Island eruption.

Applying the Ministerial exemption power to a narrow set of circumstances

10. We recommend that the exemption power does not apply to people entering New Zealand to attend or returning from business, or entertainment events such as concerts, sporting events and conferences. These types of events have commercial benefits to organisers and participants are likely to enjoy private benefits that would not justify tax payer subsidising their MIQ costs.
11. Granting exemptions from MIQ charges for people travelling for business or entertainment is not consistent with the purpose of the MIQ fees regime which is to recover at least in part the cost of MIQ services borne by the tax payer.

12. We consider it prudent to apply this power to a narrow set of circumstances. Providing for a narrow application of the exemption would avoid a situation where you could be lobbied by groups for exemptions where your decisions could become subject to challenge.

Exercising the Ministerial exemption power

13. Officials will provide advice to support Ministerial decision-making on whether certain circumstances meet the criteria set out in the Regulations, as required.
14. We recommend that the Regulations require the exempted classes of persons to be published in the Gazette and notified on a government website as soon as practicable. This provides an additional level of transparency and accountability for the exercise of this power.

Clarifying the definition of ‘supporting agency’

15. In December 2020, Cabinet agreed to amend the MIQ charges settings for ‘other critical workers’ to increase the charges and ‘make employers or supporting agencies of critical workers liable for the charges, or the individual if there is no employer or supporting agency’ [CBC-20-MIN-0136 refers].
16. The policy rationale for this was that critical workers enter New Zealand primarily for economic or job-related reasons, and that the workers, employers and supporting agencies receive the direct benefits of bringing critical workers into the country. Therefore, these organisations should be expected to contribute a greater portion of MIQ costs as part of the business’s costs.
17. Under the H5 critical purpose (“border exception”) Immigration Instructions there is a ‘two-step process’ for most people seeking to enter New Zealand, where either the applicant, or their employer/supporting agencies need to express interest in being invited to apply, and then be invited to apply. Most ‘other critical workers’ need their employers or the supporting agency to seek approval in principle and submit their expression of interest on their behalf.
18. Based on our understanding of the immigration process outlined above, we determined that a critical worker’s liability is linked to the approval in principle process. The Regulations state that a critical worker’s supporting agency is liable to pay their MIQ charges. The supporting agency is defined as “the employer or other organisation who made the request under immigration instructions for approval in principle for the other critical worker and any spouse, partner, or child of the other critical worker to travel to New Zealand”. Where there is no supporting agency, the critical workers themselves are liable for the charges.
19. Due to the speed of drafting, the implications of linking fee liability to the approval in principle process were not fully understood at the time. We have recently become aware that RSE workers are exempt from the need to complete the two-stage approval in-principle process described in paragraph 17.
20. Therefore for RSE workers, no one makes an approval in-principle request under the immigration instructions, and the ‘supporting agency’ definition in the Regulations does not apply. This means that for RSE workers, the liability for paying MIQ charges technically reverts to being the individual worker.
21. The industry body for RSE workers Horticulture New Zealand has entered into an agreement with MBIE. Under that agreement, Horticulture New Zealand has agreed to pay for the MIQ charges on behalf of each RSE worker. The liability for the MIQ charges of RSE workers sitting with the industry body is consistent with Cabinet decisions.
22. Individually invoicing each RSE worker, rather than a bulk invoice to the industry body, would not reflect the policy intent of the Cabinet decisions in December 2020. Furthermore, one of

the visa conditions for employers under the border exception for RSE workers is that charges are not passed onto the individual workers.

23. Sending 150 individual invoices to RSE workers every 16 days would also be administratively burdensome and challenging to operationally.
24. We are currently working through options to address this drafting issue in order to give better effect to Cabinet's intention and enabling liability for critical worker MIQ charges to sit with other relevant organisations/bodies where the "two-step process" does not apply to a particular group of 'other critical workers'.

Invoicing other groups

25. Similar challenges continue to arise in relation to invoicing other groups who are entering New Zealand for major government-approved events and government-to-government agreements (including international sports teams and workers in the Antarctic Programme).
26. We recommend that you ask Cabinet for delegated authority to make decisions to amend the Regulations if required following completion of this work, on the basis that any changes will only be administrative in nature and will not result in any major changes to policy settings. We will provide you with further advice in mid-August 2021. Any proposed changes would be considered at Cabinet Legislation Committee.

Next steps

27. We have attached a draft Cabinet paper for Ministerial Consultation.
28. An indicative timeline is set out below:

Action	Date
Ministerial consultation completed	4 August 2021
Cabinet policy paper considered by SWC	11 August 2021
Cabinet policy paper considered by Cabinet	16 August 2021
Drafting instructions sent to PCO	17 August 2021
Draft LEG paper and Regulations for Ministerial consultation	7 September 2021
Ministerial consultation on LEG paper completed	15 September 2021
LEG paper considered by LEG	23 September 2021
LEG paper considered by Cabinet and Executive Council	27 September 2021
Gazette Regulations	30 September 2021
Amendments come into force	28 days later

Annexes

Annex One: Draft Cabinet Paper: Amendments to the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020

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The final Cabinet paper is available on MBIE's website: <https://www.mbie.govt.nz/dmsdocument/18912-amendments-to-the-covid-19-public-health-response-managed-isolation-and-quarantine-charges-regulations-2020-proactiverelease-pdf>