



## BRIEFING

### Ministerial power to waive - Confirmation of Conditions of Class Waiver

<b>Date:</b>	11 August 2021	<b>Priority:</b>	High
<b>Security classification:</b>		<b>Tracking number:</b>	2122-0475 (AUS-004)

Action sought		
	Action sought	Deadline
Hon Chris Hipkins <b>Minister for COVID-19 Response</b>	<b>Agree</b> to the conditions for the class waiver for returnees from NSW and for people coming from Australia, excluding NSW.	12 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, Systems and Strategy			
	Principal Policy Advisor			

The following departments/agencies have been consulted
Crown Law, DPMC

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 Withdrawn           |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

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<b>Date:</b>	11 August 2021	<b>Priority:</b>	High
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### Purpose

This briefing seeks your agreement for the conditions for a class waiver for returnees from Australia, entering an MIQ facility following the suspension of the Trans-Tasman Quarantine Free Travel arrangement.

### Recommended action

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

- a. **Note** that on 9 August 2021, Cabinet agreed an amendment to COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 (the Regulations) to give you, as Minister for COVID-19 Response, powers to waive MIQ charges for classes of persons.

*Noted*

- b. **Note** that the power can be exercised by issuing a notice in the Gazette which provides the conditions that apply to the class waiver.

*Noted*

*With regard to returnees from New South Wales (NSW)*

- c. **Agree** to issue a notice under regulation 10A of the Regulations to waive fees where the person was:
- eligible for managed return flights (QT flights); and
  - arrived in New Zealand on a QT flight from NSW on or after 12 July 2021.

**Agree** / Disagree

*With regard to returnees from Australia, excluding NSW*

- d. **Agree** to issue a notice under regulation 10B of the Regulations to waive fees for people travelling from the Australia, excluding NSW, who meet the following conditions:
- that they were eligible for a Quarantine Free Flight (QFT flight) from Australia between 23 and 30 July 2021 (this is a 'managed green flight'), and
  - that they could not travel on these QFT flights because they or one of their travel group did not meet the conditions or pre-requisites for the QFT flight.

**Agree** / Disagree

- e. **Note** that if it was not your intention to include in the waiver people who left New Zealand after 11 August 2020 and before the start of QFT we will need to limit the waiver to people who left New Zealand after the announcement of QFT.

*Noted*

f. **Agree** to one of the following additional conditions

EITHER

- i. the person had last left New Zealand prior to the 23 July 2021

Agree / **Disagree**

OR

- ii. The person had last departed New Zealand after 5 April 2021 and prior to the 23 July 2021 (**recommended**)

**Agree** / Disagree

g. **Agree** to one of the following additional conditions

EITHER

- i. Option One: The applicant provides a declaration that they did not meet the conditions or pre-requisites (**recommended**)

**Agree** / Disagree

OR

- ii. Option Two: The applicant provides documentary evidence that they did not meet the conditions or pre-requisites for QFT

Agree / **Disagree**

*With regard to Publication of waiver notices.*

h. **Note** the draft waiver notices are provided in the Annex. These may be subject to minor and technical drafting changes.

*Noted*

i. **Note** to give effect to the waivers the notice will be published in the Gazette and on the Ministry website to take effect from 12:01am on 13 August 2021.

*Noted*

*With regard to Proactive release*

j. **Agree** that this briefing is proactively released with appropriate withholdings under the Official Information Act 1982.

**Agree** / Disagree



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

11. / .8. / 21



Hon Chris Hipkins  
**Minister for COVID-19 Response**

23. / .8. / 2021

## **Background**

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1. On 9 August 2021, Cabinet agreed an amendment to COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 (the Regulations) to give the Minister for COVID-19 Response powers to waive MIQ charges for classes of persons.
2. The amended Regulations empower you, as the Minister, to waive charges for classes of people, where you consider a waiver or refund appropriate, in two situations:
  - a. when the exemption from requirement to stay at an MIQF is suspended, under a COVID-19 Order and the removal is likely to be temporary (regulation 10A), or
  - b. when the person arrives in New Zealand from Australia (regulation 10B).
3. These changes were developed in response to the suspension of the Quarantine-Free Travel (QFT) arrangement with Australia. The power can be exercised by issuing a notice which can include additional conditions for the class waiver.
4. The class waivers for travellers from Australia will apply until you, as the Minister of COVID-19 Response, revoke them.

## **Conditions to apply to Returnees from NSW**

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5. We recommend that the following conditions apply for returnees from NSW:
  - a. The person is an eligible person; and
  - b. The person arrived in New Zealand on a QT flight from NSW on or after 12 July 2021 (the date that the QFT arrangement with NSW was suspended).
6. To give effect to this waiver, people who qualify for the waiver will be identified from the flight manifests of the managed return flights. No invoice will be issued and the waiver will be implemented automatically, without the need for an application process.

## **Conditions to apply to returnees from Australia, excluding NSW**

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7. On 9 August 2021, Cabinet agreed that people returning from Australia after 30 July 2021 (excluding NSW) will have to pay MIQ fees with an exception for eligible travellers that despite their best efforts and intentions could not secure a flight between 23 and 30 July 2021 [CAB-21-MIN-0288 refers].
8. On 6 August 2021, you confirmed that the group to be waived fees include only those who were eligible for QFT (managed green flights) between 23 and 30 July 2021 but were otherwise prevented from coming by law because they did not meet the pre-requisites or conditions for these flights [2122-0340 (AUS-002) refers].
9. This means that they:
  - a. Did not have a negative pre-departure test that met requirements, or
  - b. Had been in a location of interest, or
  - c. Were a contact of a COVID-19 case, or
  - d. Were symptomatic at the time of the flight
10. We have drafted the conditions for the waivers to align to your indicated intention. In our 23 July 2021 advice, we recommended that travellers from Australia are eligible for a Ministerial MIQ fee waiver if they travelled to Australia after QFT was announced on 6 April 2021 [2122-0255 (AUS 001 refers)]. You disagreed with that recommendation and indicated only returnees from NSW or those who would otherwise be prevented from coming by law should

be granted a waiver (see para 8 above). This would mean that any traveller coming from Australia could be eligible to not pay for MIQ if they met any of the pre-conditions, whether they left New Zealand during the QFT period or not.

11. We note that, in line with our advice on 9 July 2021, this could raise issues of fairness and consistency with returning New Zealanders from outside of QFT zones who are required to pay MIQ fees [NSW-001]. All travellers who left New Zealand in the period prior to QFT would have done so on the understanding that they would need to enter MIQ and pay fees if they returned to New Zealand. Inclusion of people coming from Australia who left New Zealand prior to QFT, creates an inconsistency that may be considered unfair and potentially undermine the fees regime.
12. For that reason, we are seeking your agreement that the class is narrowed to those people who left New Zealand during the QFT period – in other words, anyone who left prior to 6 April 2021 is excluded from the waiver.
13. We recommend that the waiver is also limited to people who left New Zealand prior to 23 July 2021. This will prevent future scenarios where a person returns to Australia and attempts to gain a waiver when re-entering New Zealand.
14. In addition, we also recommend that the class waiver extends to the travel group, where the group was unable to return on a managed green flight between 23 and 30 July 2021, because one of the travel group did not meet the conditions or prerequisites of the flights.
15. Applying the waiver in this way will avoid a waiver being limited to a single member of a travel group that are jointly affected by the inability one member of the group to meet the prerequisites.

#### **Determining if a person was eligible for the managed green flights**

16. We recommend that a condition of the class waiver is applicants must provide documentary evidence that they were in Australia (excluding NSW) on 22 July 2021 and that they met the eligibility criteria for managed green flights.
17. The criteria are:
  - a. New Zealand citizens and holders of residence class visas;
  - b. Holders of temporary visas and Australian citizens, who last departed New Zealand after 5 April 2021;
  - c. Holders of current permanent residence visas (including a resident return visa) issued by the Government of Australia who last departed New Zealand after 5 April 2021; and
  - d. Relevant family members of people listed in the above categories. (Relevant family member means: a spouse, civil union partner, or de facto partner, a dependent child; or a parent of a dependent child. Parent, in relation to a dependent child, means a person on whom the child is dependant).
18. MBIE will establish a waiver application process to confirm eligibility for the class waiver. An invoice will be issued as per the normal processes and the waiver will be implemented when the person provides evidence that they are eligible for the waiver.

#### **Determining if an eligible person did not meet the pre-conditions for managed green flights**

19. We have identified two options to make this determination: either the applicant supplies documentary evidence that they could not meet one of the conditions or pre-requisites or they provide a declaration that they did not meet the conditions or pre-requisites. We need you to indicate your preference, which have different risks.

*Option One: The applicant provides a declaration that they did not meet the conditions or pre-requisites (recommended)*

20. We recommend that applicants provide a statutory declaration in accordance with the Oaths and Declarations Act 1957.
21. This option has the advantage that it will be simple to implement but is likely to be subject to abuse (i.e. ineligible people could apply for a waiver). There is a strong financial incentive for a person to establish their eligibility for the waiver.
22. *Option two: The applicant provides documentary evidence that they did not meet the conditions or pre-requisites.*
23. Although appealing at one level, as the types of acceptable evidence can be stipulated, it is likely that genuinely eligible people will not have collected or kept the evidence required, at the time of the managed green flights. This is especially the case because the time of the managed green flights is already past and people may not be applying for the waiver for some time, when they can secure a return flight and MIQ booking. Furthermore there may not be any evidence available for some of the criteria – for example being symptomatic at the time or it will be difficult for people to prove they were at the location of interest if they failed to scan while there.
24. If you choose this option MBIE will publish the requirements for documentary evidence on the MBIE website.

## **Next steps**

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25. The draft wording setting out the conditions for the waivers for the Notice is attached. If you agree, we will arrange for the Notice to be published in the Gazette and on MBIE's website to take effect from 12:01am on 13 August 2021.
26. The draft notices may be subject to minor and technical drafting changes

## **ANNEXES**

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COVID-19 Public Health Response (Managed Isolation and Quarantine Charges Waiver for Quarantine Travel from New South Wales and other Parts of Australia) Notice 2021

## **COVID-19 Public Health Response (Managed Isolation and Quarantine Charges Waiver for Travel from New South Wales and other Parts of Australia) Notice 2021**

Pursuant to regulations 10A and 10B of the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020, the Minister for COVID-19 Response gives the following notice after complying with those regulations.

### **1 Title**

This notice is the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges Waiver for Travel from New South Wales and other Parts of Australia) Notice 2021

### **2 Commencement**

This notice comes into force at 12:01am on 13 August 2021

### **3 Interpretation**

(1) In this notice, —

**chief executive** means the chief executive of the Ministry for Business, Innovation, and Employment

**eligible person** has the same meaning as in [clause 5](#) of the COVID-19 Public Health Response (Exemptions and conditions for Quarantine Travel from Australia) Notice 2021

**MIQ charges** means charges payable under the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020

**Regulations** means the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020

**QFT flight** has the same meaning as in [clause 4A](#) of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020

**QT flight** has the same meaning as in [clause 4](#) of the COVID-19 Public Health Response (Exemptions and Conditions for Quarantine Travel from Australia) Notice 2021

### **4 Waiver of MIQ charges for specified persons under regulation 10A**

(1) MIQ charges that are payable by the class of persons set out in **regulation 10A(1)** of the Regulations are waived for persons who meet the following conditions:

- (a) The person is an eligible person; and
- (b) The person arrived in New Zealand on a QT flight from the State of New South Wales, Australia on or after 12 July 2021.

### **5 Waiver of MIQ charges for specified persons under regulation 10B**

#### **OPTION ONE**

(1) MIQ charges that are payable by the class of persons set out in **regulation 10B(1)** of the Regulations are waived for persons who meet the following conditions:

- (a) The person had last departed New Zealand prior to 23 July 2021; and
- (b) The person was eligible for a QFT flight from Australia between 23 July 2021 and 30 July 2021; and
- (c) The person could not travel on that QFT flight because they or one of their travel group did not meet the conditions or pre-requisites for the QFT flight; and
- (d) The person provides sufficient documentary evidence to the chief executive that they meet the conditions set out in **clause 5(1)(a) – (b)**.

- (e) The person provides a declaration to the chief executive that they meet the conditions set out in clause 5(1)(c).

(2) For the purposes of clause 5(1), **conditions or pre-requisites** can include:

- (a) The person did not have a negative pre-departure test that met requirements, or
- (b) The person had been in a location of interest, or
- (c) The person was a contact of a COVID-19 case, or
- (d) The person was symptomatic at the time of the flight.

#### OPTION TWO

(1) MIQ charges that are payable by the class of persons set out in regulation 10B(1) of the Regulations are waived for persons who meet the following conditions:

- (a) The person had last departed New Zealand prior to 23 July 2021; and
- (b) The person was eligible for a QFT flight from Australia between 23 July 2021 and 30 July 2021; and
- (c) The person could not travel on that QFT flight because they or one of their travel group did not meet the conditions or pre-requisites for the QFT flight; and
- (d) The person provides sufficient documentary evidence to the chief executive that they meet the conditions set out in clause 5(1)(a) – (c).

(2) For the purposes of clause 5(1), **conditions or pre-requisites** can include:

- (a) The person did not have a negative pre-departure test that met requirements, or
- (b) The person had been in a location of interest, or
- (c) The person was a contact of a COVID-19 case, or
- (d) The person was symptomatic at the time of the flight

#### ALTERNATIVE WORDING - OPTIONS ONE AND TWO CLAUSE 5(1)(a)

5(1)(a)The person had last departed New Zealand after 5 April 2021 and prior to 23 July 2021;