



BRIEFING

Legislative amendments and exemptions to give effect to New South Wales managed returns from Tuesday 13 July 2021

Date:	9 July 2021	Priority:	Urgent
Security classification:		Tracking number:	

Action sought		
	Action sought	Deadline
Hon Chris Hipkins Minister for COVID-19 Response	Agree to the proposed legislative amendments and exemptions to give effect to New South Wales managed returns from Tuesday 13 July 2021	10 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, Regulation and Implementation Policy		

The following departments/agencies have been consulted

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments



BRIEFING

Legislative amendments and exemptions to give effect to New South Wales managed returns from Tuesday 13 July 2021

Date:	9 July 2021	Priority:	Urgent
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Purpose

To seek your agreement to legislative amendments, exemptions, and decisions to give effect to New South Wales managed returns from Tuesday 13 July 2021. These include:

- Amending the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 to provide a mechanism to give effect to your announcement that people arriving in New Zealand from New South Wales are not required to pay Managed Isolation and Quarantine fees.
- Preparing an exemption notice to exempt those people arriving from New South Wales on managed return flights from the requirement to have a confirmed Managed Isolation and Quarantine allocation under clause 8(2A) of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020.
- Agreeing to suspend cohorting in Managed Isolation Facilities where people arriving on managed return flights from New South Wales are accommodated.

Recommended action

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

- a **Note** that not charging people entering Managed Isolation and Quarantine (MIQ) from New South Wales (NSW) due to the quarantine-free travel (QFT) pause is inconsistent with the current COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 (the Regulations).

Noted

- b **Note** that there is currently no power under the Regulations to exempt or waive MIQ charges that could be applied if a person choosing to return to New Zealand during a QFT pause or suspension is required to enter MIQ.

Noted

- c **Note** that providing exemptions or waivers from MIQ charges for people in these situations requires change to the Regulations.

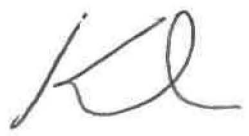
Noted

- d **Note** that amendments to the Regulations require a minimum of four weeks from policy proposals to regulations coming into effect (assuming the 28-day rule is waived).

Noted

I will ask Cab for Power to Act so that I can sign the regs as soon as they are drafted.

- e **Agree** to propose to Cabinet to amend the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 to either:
 - i. Option 1: amend the Chief Executive of MBIE waiver criteria to include a pause or suspension of QFT; OR Agree / Disagree
 - ii. Option 2: introduce a Ministerial waiver power and refund power, and agree to make it clear that an invoice does not have to be issued if a waiver power is exercised first (**recommended**). Agree / Disagree
- f **Note** the draft Cabinet talking points for an oral item proposing option 2 for the Cabinet meeting on Monday 12 July 2021 attached in Annex 1. Noted
- g **Agree** to exempt those people arriving from NSW on managed return flights from the requirement to have a confirmed MIQ allocation voucher under clause 8(2A) of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020. Agree / Disagree
- h **Direct** officials to prepare an exemption notice to exempt those people arriving from NSW on managed return flights from the requirement to have a confirmed MIQ allocation under clause 8(2A) of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020. Yes / No
- i **Agree** to suspend cohorting in Managed Isolation Facilities where people arriving on managed return flights from NSW are accommodated. Agree / Disagree



Kara Isaac
General Manager, MIQ Policy
 MIQ, MBIE

9 / 07 / 2021



Hon Chris Hipkins
Minister for COVID-19 Response

10 / 07 / 2021

Background

1. Quarantine-free travel (QFT) with New South Wales (NSW) was paused on 22 June 2021. QFT with NSW was due to resume at 11.59pm, 9 July 2021 (tonight).
2. Over the last week, 207 cases of COVID-19 have been reported in Sydney. The majority of these cases have been identified as the Delta variant. The situation is deteriorating.
3. On the weight of these recent developments, the Government has decided that QFT with NSW should not resume at this time.
4. Approximately 5000 New Zealanders are currently in NSW. It is unclear how many of these people are actively seeking to return to New Zealand.
5. The Government has signalled that it intends to stage managed return flights people arriving in New Zealand from NSW from Tuesday 13 July 2021.
6. People arriving on these managed flights will be required to enter Managed Isolation and Quarantine (MIQ) for 14 days. The Government has publicly stated that these people do not need to have a negative COVID-19 test pre-departure, and that they will not be liable for fees.
7. A number of legislative amendments and exemptions will be required to give effect to these proposals.

Amendment to MIQ Fees Regulations

8. On the proviso QFT with NSW remains 'paused', a person arriving in New Zealand from NSW will be required to enter MIQ, under provision of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 (as they will effectively be travelling on a 'red flight').
9. A person who enters MIQ under the Air Border Order is liable for MIQ Charges if they are a "specified person" as defined in the Regulations. We anticipate the majority of people returning from NSW will be specified persons and therefore liable to pay a charge.

Current fees settings

10. On 9 July 2021 you announced that people entering MIQ from NSW "will not be invoiced for their stay". There is no mechanism in the current COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 (the Regulations) to give effect to this decision.
11. Under the Regulations, status quo settings including MIQ charges continue to apply if a person returning to New Zealand during a QFT pause or suspension (and who is specified under the Regulations) is required to enter MIQ. There is no ability to exempt or waive MIQ charges in the event of a QFT pause or suspension.
12. You have previously agreed that under the Cook Islands QFT, people who enter MIQ under a pause or suspension are liable for MIQ fees [2021-3644 refers]. MIQ QFT communications have also been very clear that people entering MIQ following a QFT pause or suspension may be required to pay charges for their stay.¹
13. The Regulations currently do not provide you with the power to waive or exempt MIQ charges. The Regulations do provide the Chief Executive of MBIE with the power to waive MIQ charges for individuals in cases of undue financial hardship or other special

¹ <https://www.miq.govt.nz/travel-to-new-zealand/quarantine-free-travel/quarantine-free-travel-australia-and-new-zealand/>

circumstances.² Waiver applications are considered on a case-by-case basis and take into account all of a person's circumstances (including their reason for travel). As such, all affected QFT travellers would not qualify for a waiver.

14. To give effect to your statement that people won't be charged for MIQ, legislative change is required.

Legislative changes to waive MIQ charges for people entering MIQ from NSW

15. The Regulations need to be amended if you wish to not charge people entering MIQ from NSW. Amending the Regulations would take a minimum of four weeks.
16. Section 32F(2) of the COVID-19 Public Health Response Act 2020 (the Act) provides that 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).

17.  Legal professional privilege

18. Instead, there are options to *wave* MIQ charges that could be introduced in the Regulations:
 - a. **Option 1: amend the Chief Executive of MBIE waiver criteria to include pause or suspension of QFT**
 - i. The Chief Executive power to waive MIQ charges in cases of undue financial hardship or other special circumstances⁴ could be expanded to include if a QFT pause or suspension requires people to enter MIQ. The waiver power requires an invoice to be issued before it can be exercised.
 - ii. We do not recommend this option, as the Chief Executive power is not intended to apply to classes of people and would need to be exercised on an individual basis which would be administratively burdensome to accommodate the numbers of people returning from NSW. We have also previously advised that exemptions for classes beyond the existing criteria requires a level of discretion more appropriate for a Minister [2021-3765 refers].
 - b. **Option 2: introduce a Ministerial waiver power in the Regulations (recommended)**
 - i. Section 32F(2) of the Act provides that 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,

² Special circumstance may include accompanying an excepted person who is unable to travel alone, where a person who has travelled to visit a close relative who is seriously ill or dying or to attend a funeral or tangihanga, or where a person has travelled for the purposes of maintaining medical treatment.

³ This advice was provided by the Crown Law Office.

⁴ Special circumstance may include accompanying an excepted person who is unable to travel alone, where a person who has travelled to visit a close relative who is seriously ill or dying or to attend a funeral or tangihanga, or where a person has travelled for the purposes of maintaining medical treatment.

in any particular case or any class or classes of cases (and may or may not prescribe criteria to be applied in doing so).

- ii. The Regulations could be amended to include a power for the responsible Minister to waive MIQ charges for a class of cases. This would enable you to waive MIQ charges for people entering MIQ from NSW. The waiver power would still require an invoice to be issued before it can be exercised. We also suggest including a power for the responsible Minister to issue refunds, in whole or in part, where they consider it is appropriate in the circumstances.
- iii. We also propose making it clear that if a waiver power is exercised before an invoice has been issued, the CE of MBIE does not have to generate an invoice. Currently the Regulations require that an invoice *must* be issued regardless.
- iv. Given truncated timelines, it is not possible to provide advice on what criteria might be prescribed, and thus we recommend the power not prescribe any criteria. Criteria could be addressed in the upcoming Regulations amendments coming into effect in October.

Timing

- 19. Amending the fee Regulations requires Cabinet process, drafting by Parliamentary Counsel, and potentially a regulatory impact analysis (unless Treasury grant an exemption).
- 20. The table below sets out the minimum possible timeline for making changes to the Regulations. This timetable would be very tight and require truncating or waiving a number of usual steps and processes (including the 28 day rule).
- 21. In order to introduce the waiver power as quickly as possible, you would need to take an oral item to Cabinet on Monday 12 July 2021. The proposed timeframe allows just under 2 weeks for PCO drafting and three days for Ministerial consultation.

Steps required for Regulation change -shortest possible timeframes

Action	Date
Minister takes oral item to Cabinet	12 July 2021
Cabinet agrees policy	12 July 2021
PCO starts drafting	13 July 2021
Draft LEG paper and Regulations to Minister for consultation	22 July 2021
Ministerial consultation on LEG paper completed	27 July 2021
Cabinet (LEG) paper and Regulations lodged with Cabinet Office	29 July 2021
LEG paper agreed by LEG	5 August 2021
LEG paper agreed by Cabinet and Executive Council	9 August 2021
Regulations gazetted and come into force	11 August 2021

Risks of waiving MIQ charges for people entering MIQ from NSW

- 22. Changing the Regulations so that people entering MIQ from NSW do not pay fees would mean that travellers from NSW are treated differently to those that may be required to enter MIQ after travelling to other Australian states and the Cook Islands under QFT. It will set a precedent for both future pauses/suspensions of current QFT arrangements as well as future QFT arrangements.

23. It also raises issues of fairness and consistency with returning New Zealanders from outside of QFT zones who are required to pay MIQ fees. In particular, New Zealand citizens who have been stranded in India for the last three months without the government either facilitating their return or allocating space for them in MIQ.
24. Drafting legislative changes urgently to come into effect in timeframe above could also result in unintended consequences, for example drafting errors or adding further complexity to the fees regime.

Financial Impacts of waiving charges for people entering MIQ from NSW

25. We estimate impact on cost recovery of not charging MIQ fees for this cohort would be from \$3.2 million (excluding GST) per fortnight.
26. This figure is based on:
 - a. all returnees from NSW are either New Zealand citizens or residents
 - b. 1,000 rooms occupied
 - c. of the 1,000 rooms, 590 will be shared by two adults, with the remaining 410 single occupancy.
27. The impact on cost recovery will be greater if any of the returnees are temporary entry class visa holders (liable for higher MIQ fees), and if the room occupancy is higher than estimated (e.g. families with children over 3 years old).

Exemptions under the Air Border Order

Evidence of a confirmed MIQ allocation

28. Under the COVID-19 Public Health Response (Air Border) Order (No 2) 2020, people arriving in New Zealand on 'red flights' are required to have a confirmed MIQ allocation (ie a Managed Isolation Allocation System (MIAS) voucher). Failure to have evidence of a confirmed MIQ allocation constitutes an infringement offence, where a person is liable for a \$300 fee (and a court-imposed fine of \$1000, where applicable).
29. Current high demand for MIAS vouchers means that any vouchers released into the system would be picked up by people outside of NSW. There is also no way for vouchers to only be made available for people travelling from a specified point of origin. In order to facilitate the return of people from NSW from Tuesday, people arriving in New Zealand from NSW will need be exempt from the requirement to produce evidence of a confirmed allocation, should they enter on a managed return flight.
30. The most expedient means to exempt people arriving from NSW from the requirement to hold evidence of a confirmed allocation is for you to issue a class-based exemption to this end under clause 26 of the Air Border Order. We do not propose imposing any conditions on this exemption.
31. You are able to issue exemptions under the Air Border Order where it is necessary or desirable to promote the purposes of the Air Border Order, or the COVID-19 Public Health Response Act, and the exemption is not broader than is reasonably necessary to address the issues at hand. Officials consider that these conditions are met.
32. In making such exemption, you must take into account the advice of the Director General of Health. This advice will be provided in a Health Report that overlays the draft exemption (should you agree to this proposal).

33. The Government has indicated that approximately 1,000 rooms will be readied for people arriving in New Zealand from NSW on managed flights in the fortnight from Tuesday 13 July. MIQ will ensure that rooms are available for these people, leveraging the QFT 500 rooms, cohorting underutilisation, and contingency capacity.
34. We understand that separate advice is being provided about whether access to managed return flights can be prioritised for those with an urgent or special need to return. The exemption from the requirement to hold a confirmed MIQ allocation will not preclude this course of action. However, the prioritisation, itself, cannot be provided for through MIAS, or the offline allocation system.

Suspending cohorting

35. It is not possible to stand up dedicated Managed Isolation Facilities (MIFs) for people returning to New Zealand from NSW by Tuesday 13 July. They will enter MIFs that have returnees from high-risk countries.
36. In order to accommodate these people, we will have to suspend cohorting for all arrivals into these these particular MIFs.

Next steps

37. Officials will issue drafting instructions to Parliamentary Counsel to amend the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020, following Cabinet's decision on Monday 12 July.
38. Subject to your agreement, officials will prepare a Ministerial Exemption notice under the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 for your signature. This exemption will need to be issued by Monday 12 July.

Annex 1: Talking points for Cabinet oral item 12 July 2021

Giving effect to the decision to not charge MIQ fees to travellers from NSW

In summary, this section contains Talking Points that were a summation of information being released in this paper. The talking points were prepared and offered by MBIE/MIQ, but they do not necessarily represent messages that the Minister for COVID-19 Response accepted or ever used.

Recommendations: seeking agreement to create a Ministerial waiver provision in the MIQ charges Regulations to waive fees for travellers from NSW

In summary, this section contains Talking Points that were a summation of information being released in this paper. The Talking Points were prepared and offered by MBIE/MIQ, but they do not necessarily represent messages that the Minister for COVID-19 Response accepted or ever used.