



## BRIEFING

### Draft LEG paper: Ministerial power to waive fees for Afghanistan evacuees

<b>Date:</b>	18 November 2021	<b>Priority:</b>	High
<b>Security classification:</b>		<b>Tracking number:</b>	2122-1845

Action sought		
	Action sought	Deadline
Hon Chris Hipkins Minister for COVID-19 Response	<b>Consult</b> your Ministerial colleagues on the draft LEG paper	1 December 2021
	<b>Lodge</b> the final LEG paper for consideration by the Cabinet Legislative Committee on 9 December 2021	2 December 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	Privacy of natural persons	
	Senior Policy Advisor, System and Strategy		

The following departments/agencies have been consulted

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 Withdrawn           |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 LEG paper: Ministerial power to waive fees for Afghanistan evacuees

<b>Date:</b>	18 November 2021	<b>Priority:</b>	High
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### Purpose

This briefing provides the draft LEG paper: COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations (No 5) 2021 for ministerial consultation and seeks your agreement to lodge the final LEG paper for consideration by the Cabinet Legislation Committee on 9 December 2021. The Amendment Regulations implement changes required to implement the agreed class waiver for people included in the Afghanistan resettlement response.

### Recommended action

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

- a **Note** that on 8 November 2021, Cabinet agreed to amend the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 to include a Ministerial class waiver power for groups of people included in the Afghanistan resettlement response.

*Noted*

- b **Note** that the COVID-19 Public Health Response Act 2020 (the Act) requires the responsible Minister be satisfied that certain statutory prerequisites are met before recommending regulations affecting MIQ charges.

*Noted*

- c **Indicate** whether you are satisfied that the following statutory prerequisites are met:

- i. The charges concerned relate to managed isolation or quarantine facility (MIQF) costs (including direct and indirect costs);

Agree /  Disagree

- ii. The prescribed charges recover from any class of persons no more than an estimate of the actual and reasonable MIQF costs incurred in relation to that class (including both direct and indirect costs);

Agree /  Disagree

- iii. There is appropriate provision to grant relief from the payment of the prescribed charges in circumstances where payment of the charges would cause undue financial hardship; and

Agree /  Disagree

- iv. Legal professional privilege

Agree /  Disagree

- d **Agree** to circulate the draft LEG paper (attached in Annex One) to Ministers for consultation along with the draft Amendment Regulations.

Agree /  Disagree

e **Agree** to lodge the final LEG paper by 2 December 2021 for consideration by the Cabinet Legislative Committee (LEG) on 9 December 2021.

Agree /  Disagree

f **Note** that the amendments will come into force following Cabinet and Executive Council decisions.

*Noted*

g **Note** that once the Ministerial class waiver power for persons who arrive in New Zealand as part of the Afghanistan resettlement response is in force, we will provide you with advice on how to exercise this power. You will then need to notify who is included in the class in a Notice issued in the Gazette.

*Noted*

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

Agree /  Disagree



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

18 / 11 / 21



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

24 / 11 / 2021

## Background

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1. On 11 October 2021, you agreed not to charge MIQ fees for any individual supported or enabled to evacuate from Afghanistan to New Zealand, and who departed Afghanistan after 16 August 2021 as part of the Afghanistan resettlement response. You agreed to amend the COVID-19 (Managed Isolation and Quarantine Charges) Regulations 2020 (the Regulations) accordingly [2122-1104 refers].
2. On 8 November 2021, Cabinet agreed to amend the Regulations to include a Ministerial class waiver power for groups of people included in the Afghanistan resettlement response and invited you to instruct Parliamentary Counsel Office to give effect to these changes [CAB-21-MIN-0454.01 refers].

## Draft LEG paper

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3. A draft Cabinet paper for the Cabinet Legislation Committee COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations (No 5) 2021 (the Amendment Regulations) is attached (**Annex One**)
4. The draft Cabinet paper seeks authorisation to submit the Amendment Regulations to the Executive Council.
5. A significant number of returnees from Afghanistan have already been through MIQ and are therefore liable for MIQ charges. The paper also seeks agreement to waive the 28-day rule so that the Amendment Regulations come into force as soon as possible.
6. You will be taking another paper to the Cabinet Legislation Committee on 25 November. Amendments to the Regulations proposed in that paper will (subject to Cabinet agreement and advice of the Executive Council) provide a Ministerial power to exempt from MIQ charges, a class of persons who enter New Zealand as part of an international humanitarian relief effort. We expect that power, once it comes into force, could be used in situations similar to the Afghanistan resettlement response.
7. However, a new Ministerial power to exempt could only apply to people that are part of the Afghanistan resettlement response who enter MIQ after that power comes into force. A significant number of returnees from Afghanistan have already been through MIQ and would be liable for MIQ charges unless those charges are waived. Therefore, the Ministerial power to waive fees, which is the subject of the attached LEG paper, is required in relation to these people.

## Officials consider that the statutory requirements for regulations are met

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8. Section 32B and 32C of the COVID-19 Public Health Response Act 2020 require that before making regulations which set charges for MIQ, the relevant Minister be satisfied of the following matters:
  - a. The charges concerned relate to managed isolation or quarantine facility (MIQF) costs (including direct and indirect costs);
  - b. The prescribed charges recover from any class of persons no more than an estimate of the actual and reasonable MIQF costs incurred in relation to that class (including both direct and indirect costs); and
  - c. There is appropriate provision to grant relief from the payment of the prescribed charges in circumstances where payment of the charges would cause undue financial hardship; and

- d. The prescribed charges do not limit or are justified limits on the rights and freedoms in the New Zealand Bill of Rights Act 1990

*Charges relate to MIQF costs and do not recover more than an estimate of actual and reasonable MIQF costs*

9. The proposed amendments relate to MIQF costs but do not change the level of prescribed charges. The MIQ charges are currently set below the actual costs of MIQ and do not include costs of MBIE's partner agencies. Therefore, we consider that the proposed amendments meet the statutory prerequisites set out in paragraphs 6a. and 6b. above.

*Appropriate provision to grant relief*

10. Regulations 9 and 10 of the Regulations provide for the Chief Executive of MBIE to waive MIQ charges on the grounds of undue financial hardship or in other special circumstances. The proposed amendments to the Regulations will be an addition to those existing levers in the MIQ charges regime to grant relief. Therefore, we consider that the proposed amendments meet the statutory requirement set out in paragraph 6c. above.

*Justified limits on the rights and freedoms in the New Zealand Bill of Rights Act 1990*

11. Legal professional privilege

## Next steps

12. Once the changes to the Regulations come into force, we will provide you with advice on how to exercise this power. You will then need to notify who is included in the class in a Notice issued in the Gazette.
13. The table below summarises further next steps:

Action	Date
Circulate draft paper for Ministerial Consultation	22 November 2021
Lodge final LEG paper	2 December 2021
Cabinet Legislative Committee	9 December 2021
Cabinet	13 December 2021
Executive Council	13 December 2021
Regulations come into force	14 December 2021
Sign Fee Waiver Gazette Notice	15 December 2021

## Annexes

Annex One: Draft LEG paper: COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations (No 5) 2021

## **Annex One: Draft LEG paper: COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations (No 5) 2021**

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Cabinet paper is available at the following address: <https://www.mbie.govt.nz/dmsdocument/19578-covid-19-public-health-response-managed-isolation-and-quarantine-charges-amendment-regulations-no-5-2021-proactiverelease-pdf>