



BRIEFING

Transfer of COVID-19 community cases and household contacts from self-isolation to Managed Isolation and Quarantine

Date:	29 March 2022	Priority:	Urgent
Security classification:		Tracking number:	2122-3278

Action sought		
	Action sought	Deadline
Hon Chris Hipkins Minister for COVID-19 Response	Agree to amend the COVID-19 Public Health (Self-isolation Requirements and Permitted Work) Order 2022.	31 March 2022

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Melanie Taylor	Manager, MIQ Policy	Privacy of natural persons	✓
Privacy of natural persons	Senior Policy Advisor, MIQ Policy		

The following departments/agencies have been consulted
Ministry of Health.

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 Withdrawn |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



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Purpose

This briefing is seeking your approval to amend clause 29 of the COVID-19 Public Health Response (Self-isolation Requirements and Permitted Work) Order 2022 (the Self-Isolation Order). These are urgent amendments to ensure the provision that allows transfer of people from self-isolation to managed isolation and quarantine (MIQ) is fit-for-purpose.

Executive summary

The Self-Isolation Order allows for someone who is subject to self-isolation requirements to be transferred to a managed isolation and quarantine facility (MIQF) if they do not have a suitable place to self-isolate and there is capacity in the MIQF.

Capability

The Managed Isolation and Quarantine (MIQ) system can care for a wide range of people and has done so over the course of the pandemic. There are, however, instances where MIQ does not have the capability or wrap-around support to appropriately care for a person. The proposed amendment suggested in this briefing would mean that capability of MIQ to care for someone should also be considered before someone is transferred from self-isolation to a MIQF.

Consent-based transfers to MIQ

With widespread community transmission of COVID-19 in New Zealand, the public health risk profile means that it is no longer considered proportionate to detain a community case (or household contact) in a MIQF if they do not wish to remain in the facility.

Currently, the Self-Isolation Order allows a person to return to self-isolation if a Medical Officer of Health (MOOH) or Health Protection Officer (HPO) is satisfied that they have a suitable place to self-isolate. In practice, the transfer to MIQ from self-isolation is done on a consent-basis and a MOOH or HPO would not require someone to be detained in a MIQF without their consent.

Suggested amendment

This briefing proposes that clause 29 of the Self-Isolation Order is amended to allow the Chief Executive of MBIE (or delegate) to authorise those required to self-isolate to enter a MIQF if they do not have a suitable place to self-isolate and MIQ has the capacity and capability to accommodate them. This decision will be agreed with a suitably qualified health professional from the facility.

This provision is based off a similar provision in the COVID-19 Public Health Response (Air Border) Order 2021 that is currently being utilised to allow refugees and arrivals from Afghanistan to stay in MIQFs.

This amendment would also include provision for anyone transferred from self-isolation to MIQ to leave the facility and return to self-isolation outside of an MIQF if they wish to do so.

Recommended action

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

- a **Note** there is provision in the COVID-19 Public Health Response (Self-isolation Requirements and Permitted Work) Order 2022 that provides for persons unable to self-isolate at home to be required to do so in a managed isolation and quarantine facility (MIQF). *Noted*
- b **Note** MIQFs have previously supported a range of community cases and that this is likely to continue where an adequate support can be put in place. *Noted*
- c **Note** there are some cases where MIQFs do not have the required capability to quarantine or isolate some people due to their particular needs. *Noted*
- d **Agree** the COVID-19 Public Health Response (Self-isolation Requirements and Permitted Work) Order 2022 is amended to reflect that MIQFs must have the capacity and the capability to quarantine or isolate people before a transfer is accepted. Agree / Disagree
- e **Note** that the current legislative framework does not reflect a consent-based approach to self-isolation transferees to managed isolation and quarantine facilities. *Noted*
- f **Agree** the COVID-19 Public Health Response (Self-isolation Requirements and Permitted Work) Order 2022 is amended so that a person can be authorised by MBIE to be transferred from self-isolation to a managed isolation or quarantine facility with their consent rather than be required to by a medical officer of health or a health protection officer. Agree / Disagree
- g **Note** the CE of MBIE (or their delegate) will authorise transfer from self-isolation to a managed isolation or quarantine facility with agreement from a suitably qualified health professional. *Noted*
- h **Agree** that officials may issue drafting instructions to the Parliamentary Counsel Office to amend the COVID-19 Public Health Response (Self-isolation Requirements and Permitted Work) Order 2022 to give effect to the decisions above. Agree / Disagree
- i **Note** these amendments may be drafted across two tranches in order to prioritise the changes most needed, with a draft of the Order provided for your signature in early April. *Noted*



Melanie Taylor
Manager, MIQ Implementation and Regulation
Managed Isolation and Quarantine, MBIE

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Hon Chris Hipkins
Minister for COVID-19 Response

30 / 03 / 2022
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Background

1. The COVID-19 Public Health Response (Self-isolation Requirements and Permitted Work) Order 2022 (Self-Isolation Order) came into effect on 24 February 2022. It sets out the isolation requirements for people who test positive for COVID-19 in the community and their household contacts.
2. On 11 March 2022, MBIE provided you with advice on the role that managed isolation or quarantine facilities (MIQF) would play in providing alternative accommodation for community cases [BR2122-3031 refers], under clause 29 of the Self-Isolation Order. This briefing noted that MIQ facilities could continue to be used for community cases until mid-May (due to the decommissioning process) and potentially longer for facilities remaining after 30 June. It also set out the operating model for community cases in MIQFs and associated risks of a full compliance model.

Transfer of community cases and household contacts to a MIQF

3. The provision at clause 29 of the Self-Isolation Order provides that a Medical Officer of Health (MOOH) or a Health Protection Officer (HPO) can determine that a person who is subject to the Self-Isolation Order must do their isolation at a MIQF if:
 - a. the MOOH or HPO considers the person does not have a suitable place to self-isolate, and
 - b. the Chief Executive of MBIE has confirmed that there is capacity for the person to be isolated in a MIQF.
4. This provision has been used intermittently by the local MOOH or HPO in the regions that currently have MIQFs.

Capability of MIQ to support community cases

5. MIQ can, in some situations, be a viable alternative option for self-isolation and is being utilised to support some of the most vulnerable members of communities. MIQFs can provide shelter, uncrowded space, food, and daily health checks and has proven capable of supporting a range of people over the course of the pandemic.
6. COVID-19 Care in the Community also provides wide ranging support to vulnerable members of the community, including physical and mental health support for those required to isolate in alternative accommodation. These same resources are available for people authorised to enter MIQ.
7. MIQ does not, however, have the resources to provide additional or tailored support above the standard that is currently available through existing channels. For example, while MIQFs have security staff, they are not enforcement officers and do not have the power to detain or arrest people. Police staff are no longer on-site in MIQFs either.
8. Currently, even if MIQ does not have the *capability* to isolate or quarantine someone at a MIQF, there is no legal mechanism to prevent that person from being transferred to a MIQF. This could realistically result in a situation where a person is transferred to a MIQF without appropriate support being put in place – a situation which could be risky for them as well as for the MIQF.

Proposed solution

9. A minor change could be made to clause 29 of the Self-Isolation Order to allow the decision to take into account both the capacity and capability of MIQ to care for a transferee.

10. When determining whether MIQ has the capability to house a certain person, capability could include consideration of both the health and wellbeing of the person being referred, the other residents, and the health and safety of MIQ staff.
11. Where MIQ does not have the capability to provide adequate support to a member of the community, they will be referred back to Care in the Community to further support their self-isolation requirement.

Associated issue with seeking to leave a MIQF without an appropriate place to self-isolate

12. Once a person has been transferred to a MIQF because a determination has been made that they do not have a suitable residence or other accommodation to allow them to self-isolate, there is an issue regarding what happens if they wish to leave the MIQF before their self-isolation period is complete. In order to comply with their self-isolation requirements, they will need suitable accommodation so that a MOOH or HPO can be satisfied that the lack of suitable accommodation is no longer an issue (under clause 29(3) of the Self-Isolation Order).
13. In practice, this means that someone who no longer consents to being in a MIQF, a MOOH or HPO must sign off on their release. It is challenging for a MIQF to prevent people leaving the facilities, even though they may not have suitable accommodation to go to. Legal professional privilege

14. Currently, all those persons entering an MIQF will do so on a consent basis and will not be detained in a facility if they no longer want to stay. This paper recommends amending the legal framework to reflect the consent-based approach to ensure that the use of MIQFs is proportionate.

Proposed solution

15. It is proposed that clause 29 is amended to allow the Chief Executive of MBIE to authorise a person to be transferred from self-isolation to a MIQF after consultation and agreement by either a registered health professional from the facility, a medical officer of health or a health protection officer. This will allow a person to legally leave a MIQF if they wish, without the need for approval by a MOOH.
16. The intent of this change is to enable fluid discussions between the Care in the Community team and the relevant MIQF to ensure that the appropriate supports are available for the people who need it. It is intended that MIQ is part of a suite of options available for those who need additional support to self-isolate.
17. This authorisation process could be designed in a similar way to the COVID-19 Public Health Response (Air Border) Order 2021, which allows the Chief Executive of MBIE to authorise arrivals to New Zealand by air to enter and stay in a MIQF. This is currently being used to allow refugees and arrivals from Afghanistan to stay in MIQFs.

Impacts of proposed solution

18. By altering the regime from a requirement to an authorisation with consent, it allows flexibility for MIQ to support the wider health response by housing some community cases where it has the capability and capacity, but without imposing disproportionate requirements on those transferred from self-isolation to a MIQF compared to the restrictions they would face while in the community.
19. Those transferred would still have additional requirements to people in self-isolation (e.g. they would only be able to leave their rooms at scheduled times) but this is justifiable to

protect the health and safety of staff and others in the facility and also because the person is consenting to agree to these rules as a condition of being transferred to a MIQF. They would also receive additional health checks or support above what they might receive at home or in other forms of alternative accommodation. In this way, isolation in a MIQF can be considered as part of a suite of potential support options.

20. If a person is unable or unwilling to comply with the operational rules in a MIQF, they can either choose to leave or be required to leave, at which point the original self-isolation rules will apply to them for the remainder of their self-isolation period.

Next steps

21. These suggested amendments to the Self-Isolation Order are considered urgent for an effective and efficient transfer process. These proposals have been developed in close consultation with the Ministry of Health (MOH). The MOH supports these proposals.
22. MBIE will work with MOH to provide drafting instructions to PCO and will provide your office with an amendment order for your signature in early April.
23. The MOH is undertaking a full review of the Self-Isolation Order and further advice will be provided to you in due course.