

Departmental Disclosure Statement

COVID-19 Public Health Response Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

29 July 2020

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Part One: General Policy Statement

At present, everyone entering New Zealand is required to be isolated or quarantined at a government-managed facility for 14 days, with limited exceptions. The managed isolation and quarantine (MIQ) system is critical to preventing the spread of COVID-19 in New Zealand and protects the health and wellbeing of everyone in New Zealand. The costs to the Government of providing the MIQ system are substantial and growing.

This Bill aims to support a public health response to COVID-19 by enabling the Government to re-coup some of the costs of maintaining MIQ services to ensure those services can continue.

The Bill provides a framework that—

- requires prescribed charges for MIQ facilities to be paid by certain people who are required, or elect, to be isolated or quarantined at a government-designated facility, unless they are exempt or the charges are waived
- provides for certain classes of people to be exempt from the requirement to pay the charges
- allows regulations to set the level of the charges, and the manner and timing of payment of the charges
- allows regulations to provide for exemptions, waivers, and refunds of the charges.

Exemptions from the prescribed charges are available where it would not be appropriate for the Government to impose a charge (for example, to support New Zealand's international relations or international obligations to diplomatic and consular staff, and government representatives), or where a class of people is likely to be already experiencing financial distress and unable to pay the charges.

The Bill also aims to support a co-ordinated and orderly public health response to COVID-19 by allowing orders made under section 11 of the COVID-19 Public Health Response Act 2020 (the Act) to impose conditions on people arriving in New Zealand, including a condition that they be registered to enter an MIQ facility before entering New Zealand.

In addition, the Bill clarifies that orders made under section 11 of the Act can require a person to undergo a medical examination or testing.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	—

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	—

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	—

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>The extent to which the policy objective is achieved depends on whether people meet their obligations to pay the prescribed charge for MIQ. Non-payment of the prescribed charge becomes a debt that can be recovered through the court. MBIE will be responsible, on behalf of the Crown, for recovering debts.</p> <p>The prescribed charge will be communicated to the public via a number of channels and on arrival at a managed isolation facility. This will allow people to understand the approximate charge for them or their group in advance of returning to New Zealand.</p> <p>People will also be provided with information about payment by instalments and waivers when they enter a facility, and may indicate at this time that they intend to apply for a waiver.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

MBIE has consulted with the Ministry of Foreign Affairs and Trade and Crown Law Office. There is a risk that charging short-term travellers for MIQ may not be consistent with the World Health Organisation International Health Regulations. Officials consider that there is a credible legal argument to justify charging, and the approach in other countries reinforces this position.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

MBIE has consulted with Te Arawhiti and Te Puni Kōkiri. A charging system may prevent, delay or otherwise inhibit Māori who wish to return to New Zealand from maintaining and developing relationships across the New Zealand border. A range of mechanisms will be put in place to support people who may experience undue financial hardship because of the charge system. The regulations will also allow for exemptions and waivers.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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Advice provided to the Attorney-General by the Ministry of Justice is generally expected to be available on the Ministry of Justice's website at introduction of a bill, and can be accessed at <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights>.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO

The Bill amends section 11 of the principal Act to clarify that an order made under section 11 can require a person to undergo medical examination or testing and to provide that an order may require a person to satisfy certain criteria before entering New Zealand (for example, that the person be registered to enter a MIQ facility on arrival in New Zealand). The existing offences and penalties for failing to comply with orders made under section 11 will apply in respect of orders made under the amended section 11(1)(a)(viii) and new section 11(1)(a)(x).

3.4.1. Was the Ministry of Justice consulted about these provisions?	NO
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The changes are consistent with the existing framework.

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
A wide range of Crown organisations have been consulted on the proposals. Operational policy is being designed in parallel with the legislation.	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
<p>The Bill allows the government to charge certain people who are required to, or elect to, use government-managed MIQ facilities. Recovering part of the costs of providing MIQ will support the provision of MIQ services as part of New Zealand's public health response to COVID-19. The charge will be used to offset some of the costs incurred in respect of MIQ facilities.</p> <p>Before recommending the making of regulations, the relevant Minister must be satisfied that:</p> <ul style="list-style-type: none">the prescribed charges recover no more than the actual and reasonable MIQ facility costs (including both direct and indirect costs)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 hardshipthe prescribed charges are justified limits on the rights and freedoms in the NZ Bill of Rights Act. <p>The relevant Minister must also consult with the Minister of Health before recommending regulations be made.</p>	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person’s rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
<p>The Bill amends section 11(1)(a)(viii) to clarify that a person can be required to submit to medical examination and testing. This engages the BORA rights to be secure against unreasonable search and seizure (section 21) and to refuse medical treatment (section 11). The purpose of this provision is to ensure that appropriate public health controls can be applied in respect of people who may have COVID-19, and also that public health authorities can collect information about potentially unknown vectors of transmission in the community, to protect against future outbreaks of COVID-19.</p> <p>A COVID-19 test requires the collection of a bodily sample for a person for diagnosis and assessment. This can include the use of a moderately-invasive procedure, a nasopharyngeal swap to collect nasal secretions from the back of the nose and throat. Due to the changing nature of the COVID-19 pandemic, all aspects of the testing strategy will be kept under regular review to ensure it is proportionate and necessary. The testing strategy is subject to regular review and consulted on by the Epidemiology Technical Advisory Group.</p>	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
<p>The Bill will allow for regulations to be made that exempt classes of people from the requirement to pay the prescribed charge for MIQ. The factors the relevant Minister must be satisfied of before recommending the making of regulations are outlined in 4.2.</p> <p>The Bill amends existing provisions relating to section 11 orders. Section 11 orders are disallowable instruments that may also provide for exemptions from compliance from the requirements in the order and may also authorise persons or classes of persons in the order to grant exemptions and other authorisations specified in the order.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The Bill will allow for regulations to be made that prescribe charges for certain people entering MIQ facilities, prescribe the classes of people required to pay the charge, allow for exemptions, allow for charges to be waived in full or in part, or refunds, and prescribe the manner and timing of payment of the charge. The factors the relevant Minister must be satisfied of before recommending the making of regulations are outlined in 4.2.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO