

Departmental Disclosure Statement

COVID-19 Public Health Response (Validation of Managed Isolation and Quarantine Charges) 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 (MBIE).

MBIE certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

5 May 2021

Contents

Contents..... 2
Part One: General Policy Statement..... 3
Part Two: Background Material and Policy Information 4
Part Three: Testing of Legislative Content..... 5
Part Four: Significant Legislative Features 7

Part One: General Policy Statement

When charges for Managed Isolation and Quarantine (MIQ) were introduced in August 2020, Cabinet's policy intent was that Australian citizens and permanent residents who were ordinarily resident in New Zealand would have the same liability for charges as New Zealand citizens and residents. All other Australians were expected to be liable for charges under the provisions in the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 (the Regulations) related to temporary entry class visa holders, including other critical workers and critical health workers.

However, because of New Zealand's special relationship with Australia, Australian citizens and permanent residents are generally converted to a resident class visas when they enter New Zealand, regardless of the visa that they travel on. This visa-conversion process creates a technical issue where some Australians may have been charged an MIQ fee for which it could be argued that there was no lawful authority to charge.

The Bill validates the imposition and collection of fees under the COVID-19 Public Health Response Act 2020 and provides for their lawful collection going forward. In particular, the Bill –

- retrospectively validates the imposition and collection of specified MIQ charges by inserting a new provision that provides that an Australian citizen or permanent resident was validly and lawfully charged if they arrived in New Zealand under a temporary entry class visa, including those who travelled on a border exception as a critical health worker or other critical worker in the period starting on 11 August 2020 and ending on the commencement of this Bill.
- amends the Regulations to provide that the relevant visa status or border exception in determining whether a person is a "specified person" for the purposes of regulation 6(1)(a) is the visa status or border exception they held upon arrival in New Zealand (as opposed to entry).

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
--	----

Regulatory impact analysis

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

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?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

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?
<i>MBIE MIQ has engaged with MFAT, MBIE (Immigration Policy) and Immigration New Zealand.</i>

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?
Officials do not consider that there will be any implications for the Treaty of Waitangi or Crown Māori Relations.

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?	NO
---	----

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)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO

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
Consultation has taken place with relevant Government agencies. Due to the subject nature of this Bill and the need to retrospectively validate past practices, no external consultation was undertaken.	

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?	NO
---	----

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 amends Regulations 6(2)(c) and 6(2)(d) of the COVID-19 Public Health Response (Managed Isolation and Quarantine) Regulations 2020 to provide that the relevant visa status or border exception in determining whether a person is a “specified person” for the purposes of Regulation 6(1)(a) is the visa status or border exemption they held upon <i>arrival</i> to New Zealand.</p> <p>These provisions are necessary to ensure that the way Australian temporary entry visa holders (including critical workers and critical health workers) are charged is lawful and reflects Cabinet’s policy intent going forward.</p> <p>http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements/22.htm</p>	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
<p>The Bill inserts a new provision that provides that an Australian citizen or permanent resident was validly and lawfully charged if they arrived in New Zealand under a temporary entry class visa (includes critical workers and critical health workers) between 11 August 2020 the commencement of the Bill.</p> <p>While the way Australians have been charged to date reflects Cabinet’s policy intent, this Bill is necessary to ensure that the way Australians have been charged was lawful. There will be no adverse effect compared to the status quo for this provision.</p>	

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?	NO
--	----

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?	NO
---	----

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
--	----

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
--	----