

COVID-19 Public Health Response Amendment Bill (No 2)

Government Bill

As reported from the Health Committee

Commentary

Recommendation

The Health Committee has examined the COVID-19 Public Health Response Amendment Bill (No 2) and recommends by majority that it be passed. We recommend all amendments unanimously.

About the bill as introduced

The COVID-19 Public Health Response Act, which was enacted in May 2020, established a legal framework to support the public health response to COVID-19. The Act allows the Minister for COVID-19 Response, or the Director-General of Health in certain circumstances, to make COVID-19 orders. The orders give effect to the public health response to COVID-19.

The bill aims to enable the public health response to COVID-19 to continue to function in a coordinated and orderly way. It would make amendments to the Act that are informed by the experience of working with the Act since it commenced. The bill seeks to:

- extend the expiry date of the Act by one year, from May 2022 to May 2023
- improve the flexibility for making COVID-19 orders
- strengthen the infringement regime and deter non-compliance with orders
- support the effective management and operation of managed isolation and quarantine facilities (MIQF)
- enable a limited group of enforcement officers to stop vehicles at checkpoints.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor, technical, or consequential amendments.

Orders that can be made under the Act

Power of the Director-General to make COVID-19 orders

Section 11 sets out the orders that can be made under the Act. The Minister can make orders under section 9, while the Director-General of Health can make similar orders under section 10. Section 10(a) provides that the Director-General's orders may only apply within the boundaries of a single territorial authority district. Under section 10(b), the Director-General must also believe that the order is urgently needed to prevent or contain the outbreak or spread of COVID-19 and is the most appropriate way of addressing those matters at the time.

Clause 6 of the bill, replacing section 10(a), would remove the limit that the order could only apply within the boundaries of a single territorial authority district. Instead, the Director-General could make COVID-19 orders that applied within any boundaries that were clearly described by reference to roads, geographical features, or some other practical way. The description would simply need to ensure the boundaries could be readily ascertained.

On 20 October 2021, the Regulations Review Committee wrote to us setting out its concerns about several provisions in the bill. It noted that the Minister's power under section 9 is subject to several safeguards but the Director-General's power under section 10 is not.

The Regulations Review Committee noted that the substance of the powers under sections 9 and 10 is nearly the same. It was concerned that the bill is unclear as to when Parliament intends the Minister to make an order, and when it intends the Director-General to make one. The Regulations Review Committee considered that, without a clearer distinction between the orders, the Director-General's power could be used instead of the Minister's. However, the Director-General's power would not have the extra safeguards and accountability of the Minister's power. We accept this recommendation and recommend amending section 10 accordingly by inserting paragraphs (c) and (d).

The Regulations Review Committee also believed that, given the lack of safeguards, the bill should be amended to place more limits on COVID-19 orders made by the Director-General. Section 14(4) of the Act provides that these orders expire 1 month after they come into force, unless sooner revoked or extended. We consider that this existing limitation is appropriate.

Interaction with powers under section 70 of the Health Act

Section 70 of the Health Act 1956 sets out the actions that a medical officer of health can take to prevent the outbreak or spread of any infectious disease.¹ The Regulations Review Committee expressed concern that the bill lacks clarity about when the Director-General would be expected to make orders under the COVID-19 Act and when they should make orders under the Health Act. It noted that the section 70 powers are very broad and are not limited by the need for urgency. Also, the enforcement powers applicable to each power are slightly different. The Regulations Review Committee considered that the bill should be clearer about the distinction between these powers and when Parliament intends that each should be used.

We understand that the powers in section 70 of the Health Act may only be exercised by a medical officer of health. Although the current Director-General of Health may exercise the powers of a medical officer of health due to his training as a public health doctor, this may not always be the case.

We note that the purpose of the COVID-19 Act is to support a public health response that avoids, mitigates, or remedies the actual or potential adverse effects of a COVID-19 outbreak. It also allows social, economic, and other factors to be taken into account, where it is relevant to do so. We were advised that, now that the COVID-19 Act is in place, the powers under section 70 of the Health Act would continue to be used for the purpose of preventing the outbreak or spread of other infectious disease in certain situations.

We understand that the purpose of retaining the powers in section 70 is to ensure that orders can be made that apply to specific individuals or specific or targeted groups. Conversely, a COVID-19 order is intended to enable the Director-General to respond to a situation where public health restrictions may need to be imposed urgently on an entire region or place. We note that it would not be appropriate to use a COVID-19 order for specific individuals and recommend amending clause 9 to insert section 12(2)(aa) to clarify the application of COVID-19 orders. Our proposed amendment would explicitly state that COVID-19 orders could not apply only to a specific individual.

Purpose of COVID-19 orders

Section 11(1)(a) provides that the Minister or Director-General can make an order to require people to refrain from taking any specified actions that contribute, or are likely to contribute, to the risk of the outbreak or spread of COVID-19. They can also require people to take any specified actions, or comply with any specified measures that contribute, or are likely to contribute, to preventing the outbreak or spread of COVID-19.

¹ Medical officers of health must be doctors who are suitably qualified and experienced in public health medicine.

Clause 7 of the bill would replace section 11. It would expand the purposes for which orders could be made to allow for the ongoing management of COVID-19 rather than only its prevention. Proposed new section 11(1)(a) would enable the Minister or Director-General to require persons to take any specified actions or comply with any specified measures. The actions and measures would need to contribute, or be likely to contribute, to preventing, containing, reducing, controlling, managing, eliminating, or limiting the risk of the outbreak or spread of COVID-19.

We consider that this provision could be further strengthened. Therefore, we recommend amending section 11 to also enable COVID-19 orders to be made to avoid, mitigate, or remedy the actual or potential adverse public health effects of the COVID-19 outbreak.

Restricting movement in MIQF

Proposed new section 11(1)(b) specifies the actions or measures that the Minister or Director-General could require for an MIQF or other place of isolation or quarantine. The actions and measures would need to be for the purpose of managing the movement of people to, from, and within the MIQF or other place of isolation.

We consider that this section, as introduced, is not broad enough to capture the restriction of movement that could be needed in situations where people are self-isolating. We recommend amending section 11(1)(b) so that it would also apply to places of self-isolation. Consequently, we also recommend amending the definition of “room” in clause 5, amended section 5, to also include a place of self-isolation.

We were particularly interested in self-isolation, including the support that is available for people isolating at home and possible avenues for additional support. We also discussed the complaints process for self-isolation and would like to ensure that any process focuses on equity. We would expect a timely response to complaints to help improve services while people are still in isolation. We were advised that the situation is constantly evolving, and, as case numbers increase, agencies will need to work collaboratively with local communities. We understand that the bill would provide a legal framework to work towards this.

Power to close roads and public places and stop vehicles

Clause 12 would amend section 22 of the Act. Under proposed new section 22(3A), a constable could stop a vehicle at any road block or checkpoint. The checkpoint would need to have been established to enforce or monitor compliance with a COVID-19 order that restricts movement by people with or without a vehicle. Proposed new section 22(5) would also enable an enforcement officer to stop a vehicle for the purpose stated in section 22(3A) if they were acting under the supervision of a constable.

We note that this power, as introduced, would only apply to vehicles. However, the COVID-19 order could restrict the movement of people and vehicles. As a result, a person could leave their vehicle and walk through a checkpoint. Therefore, we recommend amending section 22(3A) and (5) to also enable people to be stopped.

Management of MIQFs and other places of isolation or quarantine

Clause 22 would insert new subpart 3B (sections 32J to 32T) into Part 2 of the Act. It relates to the management of MIQFs and other places of isolation or quarantine.

Operation of managed isolation allocation system

Proposed new section 32K provides that the chief executive of the responsible agency (currently the Ministry of Business, Innovation and Employment) would be responsible for the operation of the managed isolation allocation system. New section 32L specifies that the Minister must determine how online and offline allocations for MIQFs are apportioned.² Under section 32N, the Minister would determine the eligibility criteria for offline allocations. The chief executive would determine the allocations based on those criteria.

The Regulations Review Committee noted that the determination of the eligibility criteria for offline allocations is more akin to a legislative decision than an administrative decision. It considered that the decision was legislative in nature because demand for allocations significantly outstrips supply, which prevents New Zealanders from entering the country. It considered that decisions about who should be eligible for an allocation could be more administrative if supply was adequate for demand. The Regulations Review Committee was concerned that the bill does not contain appropriate safeguards for the making of legislation. It recommended that section 32N be amended to describe the Minister's determinations of eligibility criteria for offline allocation as secondary legislation. Alternatively, section 32N could be amended to describe the types of matters the Minister would need to consider when making those determinations.

We agree that it would be useful to specify the criteria that the Minister would need to consider when deciding eligibility criteria for offline allocations. We recommend inserting section 32N(2A) to this effect. Our proposed amendment would require the Minister to consider the right of every citizen to enter New Zealand under section 18(2) of the New Zealand Bill of Rights Act 1990 (NZBORA). The Minister would also need to take into account the need to mitigate the social, economic, and other effects of COVID-19.

Proposed new section 32M(2)(a) specifies that, when deciding online allocations, the Minister would need to take into account the rights of New Zealanders to enter New Zealand. We recommend amending this section to make it clear that this right is under section 18(2) of NZBORA.

² The bill defines an "online allocation" as an "allocation obtained by registering on the managed isolation allocation system online portal and obtaining a voucher". Offline allocations are places in MIQFs that are not made available online and must be manually applied for. Examples of offline allocations include allocations for emergencies, time-sensitive travel, and groups.

Failing to comply with conditions imposed in MIQFs or other places of isolation or quarantine

Proposed new section 32P would restrict the movement of people staying in an MIQF or other place of isolation or quarantine by requiring them to remain in their rooms except for a purpose specified in the section. New section 32P(2) provides that a person leaving their MIQF or other place of isolation would need to comply with any conditions that the chief executive imposed. As introduced, failure to comply with this requirement is not an infringement offence or a criminal offence. We recommend amending section 32P so that failing to comply with a condition or direction given under section 32P(2) would be an infringement offence under section 32P(6) or, where the failure is intentional, a criminal offence under section 32P(5).

Restricting a person to their room

Proposed new section 32P(3) specifies the circumstances when the chief executive could choose not to exercise their power under section 32P(1)(a). That section would require a person in MIQF or other place of isolation or quarantine to remain in their room except to undertake an activity authorised by the chief executive.

Proposed new section 32P(4) would enable the chief executive to consider the operational and resourcing implications for the MIQF or other place of isolation and quarantine when deciding whether to restrict a person to their room.

We understand that this provision is intended to apply only to the chief executive's decision under section 32P(3). However, we believe that section 32P(4), as introduced, could appear to restrict any movement out of rooms. Accordingly, we recommend amending the bill to make it clear that section 32P(4) would only apply to the chief executive's decision not to exercise their power under section 32P(1)(a).

We recommend inserting a provision that would require the chief executive to consider the impact on a person's rights under NZBORA when choosing not to allow access to activities outside rooms. We recommend inserting section 32P(4)(a) to this effect. We consider that our proposed amendment would maintain consistency with the rest of the Act, which explicitly refers to NZBORA throughout.

Offences relating to restriction of movement

Under proposed new section 32P(5)(b)(ii), a body corporate would be liable for a fine not exceeding \$15,000 if they were convicted of failing to comply with section 32P(1). However, given that only individuals can be in MIQFs, we recommend deleting this provision.

Power to hold things

Proposed new section 32R would enable the chief executive to seize and hold anything that a person in an MIQF possessed or attempted to bring into the MIQF. The item would need to be in breach of the rules made under new section 32Q. We recommend amending section 32R by removing the references to "seize". Our proposed

amendment would make it clearer that the bill does not contain a power to inspect items or search rooms without consent.

Information collection

Proposed new section 32T would require a person liable for the costs of MIQF under section 32E of the Act to provide their contact details. This provision is intended to support the invoicing of MIQF costs. However, we note that this would not capture situations where employers would be liable for the charges rather than the individual. We recommend amending section 32T(1) to make it clear that the person for whom the charges were payable would need to provide the contact details of the people who would be paying the charges.

Infringement offences

Clause 13, which would replace section 26 of the Act, relates to offences. Section 26 retains the offence of intentionally failing to comply with a COVID-19 order. It also retains the provision that it is an infringement offence if a person breached anything specified as an infringement offence in the legislation or a COVID-19 order and extends this provision to also include infringement offences specified in a rule made under section 32Q.³

Clause 23, which would replace section 33, contains the general regulation-making powers. It would enable the Governor-General by Order in Council to make regulations for infringement offences. Infringement fees could not be set at more than \$4,000 for an individual or \$12,000 for any other person. Fines could not be more than \$12,000 for an individual or \$15,000 for any other person. New section 33(1)(b) provides that the regulations could prescribe different penalties for different infringement offences or classes of infringement offences.

The Regulations Review Committee acknowledged that the COVID-19 orders contain a large number of infringement offences, which vary significantly in seriousness. However, it was concerned that the shift from the penalty being determined by Parliament to the Governor-General lacks essential safeguards. It considered that this concern could be addressed by requiring the Minister to recommend that the regulation-making power be exercised. The bill should also be amended to describe the matters that the Minister would need to consider before making the recommendation. We recommend amending section 33(1) to require the Minister to recommend that the regulations be made. We also recommend inserting section 33(1A) to specify the matters that the Minister would need to consider before recommending that regulations be made. The matters would be the severity and impact of the breaches, the appropriateness of the penalty for any group likely to be affected, and the penalties for comparable offences in other legislation.

³ That section relates to the chief executive's power to make rules.

We pointed out the sharp increase in fees and fines for infringement offences. For example, the bill would increase the maximum infringement fee for individuals from \$300 to \$4,000 and the infringement fine imposed by a court from \$1,000 to \$12,000. We discussed whether the increases are proportionate, appropriate, and would act as a deterrent for people who repeatedly failed to comply with COVID-19 orders. Our discussions included whether alternatives to fines, such as electronic monitoring, had been considered. We were advised that infringement offences are commonly used throughout the justice sector and that electronic monitoring would not be appropriate for infringement offences. For situations where people repeatedly breached COVID-19 orders, a person could be charged with a criminal offence and would go before the courts. They would be subject to a fine or imprisonment if convicted.

We understand that the process is under way to develop regulations to set an appropriate system for graduated infringement fees. A cross-agency working group is considering a range of matters related to the scheme, including ensuring that the higher penalties are not inequitable. We were advised that the maximum penalties would only apply to a very small proportion of infringement offences. The differentiation between offences would be based on the risk of transmission or spread of COVID-19.

Ensuring the privacy of contact tracing data

We understand that stakeholders have expressed concern that existing legislation has insufficient protections for data collected for COVID-19 contact tracing purposes. In particular, they are concerned that contact tracing data could be used by:

- the Police, and government agencies with enforcement powers, for the purposes of investigation or enforcement
- organisations in the private sector for marketing purposes
- employers for purposes other than health and safety
- individuals coercively against other individuals.

We note that these concerns could be mitigated by protections in a range of legislation. They include the Privacy Act 2020, the Judicial Review Procedure Act 2016, the New Zealand Bill of Rights Act 1990, the Search and Surveillance Act 2012, and the Evidence Act 2006. However, we acknowledge that the various powers that exist in general legislation are not readily obvious or able to be enforced.

We recommend amending the bill by inserting clause 25A to include a provision as new section 34A, to clarify the privacy of contact tracing data. Information created or provided by members of the public through QR scans and paper-based forms for contact tracing purposes could only be used for public health purposes and could not be used by any person or organisation for any other purpose.

We also recommend inserting an offence for intentionally failing to comply with section 34A(1). An individual who was convicted would be liable for a prison term not exceeding 6 months or a fine not exceeding \$12,000. For any other person, the fine could not exceed \$15,000.

COVID-19 orders for the management of testing consumables and laboratories

Clause 7, new section 11, would empower the Minister and Director-General to make COVID-19 orders for the management of testing consumables (such as reagents and swabs) and laboratories. Under proposed new section 11(1)(d) an order could be made for laboratories that undertake COVID-19 testing to:

- set quality control measures and minimum standards
- require COVID-19 test results to be reported to the Director-General's public health national testing repository
- manage the supply of testing consumables used by the laboratories.

Proposed new section 11(1)(e) would also empower the Minister and Director-General to make an order to:

- requisition testing consumables from laboratories to use for, and reallocate to, the national public health response
- undertake COVID-19 testing solely for the purposes of the public health response to COVID-19.

Clause 8, new section 11A, provides that laboratories affected by orders made under section 11(1)(e) would be entitled to compensation from the Crown. The compensation would be at market rates for the consumables requisitioned and testing undertaken.

We recognise that the powers under new section 11(1)(e) are very broad, and considered how they might be limited. Some options were amending the bill to require additional scrutiny of an order, and removing the ability for the Director-General to make an order. Other options were narrowing the circumstances in which an order could be made, and imposing a maximum duration on orders.

We received advice that the purpose of the provisions is to ensure necessary tools are available to respond in the event of a significant resurgence of COVID-19 that threatens to overwhelm medical testing. We were also advised that the orders are not expected to be used routinely. We have therefore not recommended any amendments to these sections. However, some of us consider that the powers under this section are unnecessary and are not justified.

Warrantless powers of entry

Section 20(1) of the Act enables an enforcement officer to enter, without a warrant, any land, building, craft, vehicle, place, or thing. The enforcement officer must have reasonable grounds to believe that a person is failing to comply with any aspect of a COVID-19 order.

Some of us expressed concern that the bill does not amend section 20 of the Act to explicitly exclude marae. However, we understand that several other Acts contain powers to enter private homes without a warrant. Marae are generally not excluded where powers of entry are available over private property. Therefore, we were

advised that any decisions about the appropriateness of warrantless powers of entry to marae would need to be considered in the context of other legislation that contains similar powers.

New Zealand National Party differing view

National opposes the COVID-19 Public Health Response Amendment Bill (No 2).

The bill is already out of date. The bill was introduced on 21 September and referred to the Health Committee on 29 September. Since then, in just over a month, the government has already signalled the following significant changes to COVID policy:

- the introduction of a traffic light system (the COVID Protection Framework) for the whole of New Zealand;
- limited changes to MIQ (in the short-term) and the prospect of more fundamental changes (in the medium-term);
- purportedly clearer rules for vaccination mandates for private sector employers; and
- a vaccination certification regime.

It is also worth noting that this bill reflects a world in which New Zealand's strategic aim with respect to COVID is elimination. Because of the government's clear failure to plan for Delta, the government has now been forced into a situation in which suppression is now the obvious goal of public policy (even if Ministers will not say so publicly). The bill was written in a world in which elimination was the stated aim of government policy and there was no back-up plan. It was assumed that elimination would work. When it did not, the government was left scrambling, as the rush of announcements summarised above indicates.

National opposes the bill for two major reasons.

First, the bill is predicated on a situation where highly restrictive border settings continue for the foreseeable future. The bill builds on the existing COVID-19 Public Health Response Amendment Act by adding further layers to the MIQ legal regime; when the goal of public policy should now be to dismantle the whole regime as much as possible.

At the time of writing, over 2,200 COVID cases and close contacts were isolating in the Auckland region at home, while fully vaccinated New Zealanders offshore without COVID were forced to endure the MIQ lottery in order to obtain one of a severely limited number of places in MIQ. The evidence suggests the risk that these travellers present to New Zealand is very low and 14 days MIQ is a disproportionate response to the risk they present, as public health experts have noted.

Since August 23, just two fully vaccinated travellers have tested positive for COVID in MIQ on day 8 or later.

National believes that MIQ should be dismantled for fully vaccinated travellers to New Zealand with negative pre-departure tests as a matter of priority. Enforcing MIQ on these travellers no longer makes any sense; and in fact it is callous and unfair.

Second, National strongly objects to clause 7, which allows COVID-19 orders to be made which may require the owner, or person in charge, of a specified laboratory that undertakes COVID-19 testing to deliver or use, in accordance with directions given under the order, specified quantities of COVID-19 testing consumables for the purposes of the public health response to COVID-19, and, undertake COVID-19 testing solely for the public health response to COVID-19.

The lack of widespread use of saliva testing in New Zealand has been a long and drawn out saga that reflects extremely poorly on the Ministry of Health and the Government. It is a national disgrace and there should be an urgent public inquiry on the matter.

The ministry spent much of the first half of this year casting doubt on the accuracy of saliva tests in comparison to nasal PCR tests, even though an existing private provider, Rako Science, had their test diagnostically validated in New Zealand laboratories, and Dr Anne Wyllie's work was being increasingly recognised in the United States and internationally. Associate Professor Janet Pitman from Victoria University says Rako's test "is similar if not better than the nasal swab test." Sir Brian Roche's Continuous Improvement Group even said to Minister Hipkins that there is a "strong case for adopting saliva testing as the main method for testing in New Zealand."

Saliva testing was recommended as an urgent priority by the Simpson/Roche review in September 2020. The roll-out was then delayed repeatedly, only getting under way in August 2021.

National members were shocked at the submission by Rako Science to the committee. Rako stated that:

Rako Science has had regular commercial discussions with the Ministry of Health procurement team in the last eight weeks at which a senior Ministry official repeatedly urged Rako Science to not reserve any of its testing capacity, provisioned for private sector customers, for a public health response. This occurred at the early stages of the current outbreak, when 10-hour queues and late reporting were regularly reported by media.

The Ministry's procurement team also repeatedly declares that it has NOT entered contract negotiations with Rako Science, despite claiming Rako Science as a Ministry provider in an email sent to industry.

Rako Science has also offered the Ministry a protocol from the University of Illinois which would allow us to process 8 times our current 10,000 per day testing capacity. This has not been taken up.

Beginning in March 2021, Rako Science has repeatedly offered to the Ministry of Health to license its technology, for a peppercorn fee, to publicly-owned laboratories to

support the public health response. This offer has never been accepted or examined by the Ministry.

Rako Science has consistently offered to provide its services to the Ministry of Health and to the Minister for COVID-19 Response since December 2020. There is no impediment to contracting with COVID-19 testing laboratories to ensure contingent capacity to meet all pandemic scenarios.

National members do not understand the need for clause 7 of the bill. As Rako says, it gives draconian powers to the Minister of Health and the Director-General to direct and, through compulsory requisition, the ability to effectively nationalise testing laboratories for COVID-19. It will have a negative effect on New Zealand's reputation and disincentivise new investment in testing technology. The compensation provisions are inadequate.

For these reasons National does not support the bill.

Act New Zealand differing view

ACT opposes the bill in general. At a time when New Zealand should be moving towards less restrictive policies to re-establish normality after the pandemic, Parliament is considering a bill that will deepen and prolong highly restrictive policies.

One part of the bill deserves special mention. ACT strongly opposes the amendments to the principal Act set out in clause 7, being new sections 11(1)(c)-(d), and the consequential amendments in clause 8. These amendments would effectively allow the Government to confiscate property with impractical and restricted rights of appeal.

We heard from people who might be affected by these provisions, those who run laboratories. They said they have no way of knowing how they will deal with the new regulatory risk they face under these provisions. They do not know how they would satisfy existing contracts if their resources were requisitioned, or how they manage such a relationship.

The compensation provisions are highly unusual and impractical. The restriction of appeals to the District Court is an affront to the hierarchical structure that underpins courts in New Zealand and other civilised societies. The requirement for compensation at "market rates" is impractical and naïve, in the kind of circumstances that these provisions might be used.

The Government, in drafting this legislation, seems not to have considered that the net effect of the legislation might be to discourage investment in the very things it is trying to make abundant. Nor has it properly considered the effect on New Zealand's prosperity of legislation that so easily erodes New Zealanders' property rights.

Finally, the legislation needs to be seen in the context of a considerable public spat between the Ministry of Health and one of the submitters who might be subject to having their property seized by the Director-General of the Ministry of Health. In this light, the legislation can be seen as a way of settling a dispute, and something Parliament should block and certainly not be a party to.

Appendix

Committee process

The COVID-19 Public Health Response Amendment Bill (No 2) was referred to the committee on 29 September 2021. The closing date for submissions on the bill was 11 October 2021. We received and considered submissions from 14,626 interested groups and individuals. We heard oral evidence from 91 submitters at hearings by videoconference.

We received advice on the bill from the Ministry of Health and the Ministry of Business, Innovation and Employment. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting. The Regulations Review Committee reported to us on the powers contained in clauses 6, 13, and 22.

Committee membership

Dr Liz Craig (Chairperson)

Chris Bishop

Dr Elizabeth Kerekere

Dr Anae Neru Leavasa

Dr Tracey McLellan

Debbie Ngarewa-Packer

Sarah Pallett

Dr Gaurav Sharma

Penny Simmonds

Tangi Utikere

Brooke van Velden

Simon Watts

David Seymour took part in the consideration of this item of business.

**COVID-19 Public Health Response Amendment Bill
(No 2)**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Chris Hipkins

COVID-19 Public Health Response Amendment Bill (No 2)

Government Bill

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| <i>Amendment to Secondary Legislation Act 2021</i> | | | |
| 29 | | Principal Act | 22 |
| 30 | | Schedule 14 amended | 23 |
| Schedule 1 | | | |
| New Part 2 inserted into Schedule 1 | | | |
| Schedule 1A | | | |
| <u>Amendments to secondary legislation</u> | | | |

The Parliament of New Zealand enacts as follows:

- 1 Title**

This Act is the COVID-19 Public Health Response Amendment Act **(No 2) 2021**.
- 2 Commencement** 5
 - (1) The following provisions come into force on a date appointed by the Governor-General by Order in Council:
 - (a) **section 5(3):**
 - (b) **section 7** (to the extent that it relates to new **section 11(2)** of the COVID-19 Public Health Response Act 2020); 10
 - (c) **section 13** (to the extent that it relates to new **section 26(4)** of that Act);
 - (d) **section 18:**
 - (e) **section 22** (to the extent that it relates to new **section 32Q(1)(c)** of that Act). 15
 - (2) The rest of this Act comes into force on the day after Royal assent.

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- (3) An Order in Council made under this section is secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

| | | |
|---------------------|--|-------------------------|
| Publication | <u>PCO must publish it on the legislation website and notify it in the Gazette</u> | <u>LA19 s 69(1)(c)</u> |
| Presentation | <u>The Minister must present it to the House of Representatives</u> | <u>LA19 s 114</u> |
| Disallowance | <u>It may be disallowed by the House of Representatives</u> | <u>LA19 ss 115, 116</u> |

This note is not part of the Act.

**Part 1
Amendments to principal Act**

- 3 Principal Act** 5
This Part amends the COVID-19 Public Health Response Act 2020.
- 4 Section 3 amended (Repeal of this Act)**
Replace section 3(3) with:
- (3) If not repealed sooner under subsection (1), this Act is repealed on the close of 13 May 2023. 10
- 5 Section 5 amended (Interpretation)**
- (1) In section 5(1), repeal the definition of **MBIE**.
- (2) In section 5(1), insert in their appropriate alphabetical order:
- chief executive** means the chief executive of the responsible agency
- other place of isolation or quarantine** means a place of isolation or quarantine designated ~~by~~ under a COVID-19 order ~~that is not an MIQF~~ 15
- responsible agency** means the department of the public service or agency or entity that, with the authority of the Prime Minister, is responsible for the administration of MIQFs
- room**, in relation to an MIQF ~~or other place of isolation or quarantine~~, other place of isolation or quarantine, or a place of self-isolation or quarantine, means the area allocated to a person for the purpose of undertaking isolation or quarantine, including 1 or more rooms and any outdoor space such as a garden or balcony 20
- (3) In section 5(1), insert in its appropriate alphabetical order: 25
- infringement fee**, in relation to an infringement offence, means the infringement fee for the offence specified in **section 26(4)(a)** or prescribed by regulations
- (4) In section 5(1), repeal the definition of **relevant Minister**.
- 6 Section 10 amended (Director-General may make COVID-19 orders)** 30
Replace section 10(a) with:

- (a) ~~the order may apply only within boundaries described in the order that—~~
 - ~~(i) are relevant to the circumstances addressed by the order; and~~
 - ~~(ii) are described in a practical way, whether by reference to roads, geographical features (such as rivers or ranges), or in any other way that enables the boundaries to be readily ascertained:~~

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6 Section 10 replaced (Director-General may make COVID-19 orders)

Replace section 10 with:

10 Director-General may make COVID-19 orders

The Director-General may make a COVID-19 order in accordance with the following provisions:

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- (a) the order may apply only within boundaries described in the order that—
 - (i) are relevant to the circumstances addressed by the order; and
 - (ii) are described in a practical way, whether by reference to roads, geographical features (such as rivers or ranges), or in any other way that enables the boundaries to be readily ascertained; and
- (b) the Director-General must be satisfied that the order—
 - (i) is urgently needed to prevent or contain the outbreak or spread of COVID-19; and
 - (ii) is the most appropriate way of addressing those matters at the time; and
- (c) the Director-General must be satisfied that the order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990; and
- (d) the Director-General must be satisfied that the order is appropriate to achieve the purpose of this Act.

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7 Section 11 replaced (Orders that can be made under this Act)

Replace section 11 with:

11 Orders that can be made under this Act

(1) The Minister or the Director-General may, in accordance with section 9 or 10 (as the case may be), make an order under this section for 1 or more of the following purposes:

30

- (aa) to require persons to refrain from taking any specified actions or to take any specified actions, or comply with any specified measures, so as to contribute or be likely to contribute to either or both of the following:
 - (i) preventing, containing, reducing, controlling, managing, eliminating, or limiting the risk of the outbreak or spread of COVID-19;

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- (ii) avoiding, mitigating, or remedying the actual or potential adverse public health effects of the outbreak of COVID-19 (whether direct or indirect):
- (a) ~~to require persons to refrain from taking any specified actions that contribute or are likely to contribute to the risk of the outbreak or spread of COVID-19, or require persons to take any specified actions, or comply with any specified measures, that contribute or are likely to contribute to preventing, containing, reducing, controlling, managing, eliminating, or limiting the risk of the outbreak or spread of COVID-19, including (without limitation) by way of example under **paragraph (aa)**, requiring persons to do any of the following:~~ 5
- (i) stay in any specified place or refrain from going to any specified place:
 - (ii) refrain from associating with specified persons:
 - (iii) stay physically distant from any persons in any specified way: 15
 - (iv) refrain from travelling to or from any specified area:
 - (v) refrain from carrying out specified activities (for example, business activities involving close personal contact) or carry out specified activities only in any specified way or in compliance with specified measures: 20
 - (vi) be isolated or quarantined in any specified place or in any specified way:
 - (vii) refrain from participating in gatherings of any specified kind, in any specified place, or in specified circumstances:
 - (viii) report for and undergo a medical examination or testing of any kind, and at any place or time, specified and in any specified way or specified circumstances: 25
 - (ix) provide, in specified circumstances or in any specified way, any information necessary for the purpose of contact tracing:
 - (x) satisfy any specified criteria before entering New Zealand from a place outside New Zealand, which may include being registered to enter an MIQF on arrival in New Zealand: 30
- (b) in relation to an MIQF or other place of isolation or quarantine, other place of isolation or quarantine, or a place of self-isolation or quarantine, to require specified actions to be taken, or require compliance with any specified measures, for the purpose of managing the movement of people to, from, and within the MIQF or other place of isolation and quarantine, other place of isolation or quarantine, or place of self-isolation or quarantine, including (without limitation) any of the following: 35
- (i) giving directions that relate to the movement of people to, from, and within the MIQF or other place of isolation or quarantine, 40

- other place of isolation or quarantine, or place of self-isolation or quarantine:
- (ii) imposing restrictions and conditions that relate to the movement of people to, from, and within the ~~MIQF or other place of isolation or quarantine~~, other place of isolation or quarantine, or place of self-isolation or quarantine: 5
 - (iii) permitting people to leave their rooms in the ~~MIQF or other place of isolation or quarantine~~, other place of isolation or quarantine, or place of self-isolation or quarantine in accordance with any requirements or conditions specified in the order: 10
- (ba) in relation to any places, premises, craft, vehicles, or other things, to require specified actions to be taken, require compliance with any specified measures, or impose specified prohibitions, so as to contribute or be likely to contribute to either or both of the following:
- (i) preventing, containing, reducing, controlling, managing, eliminating, or limiting the risk of the outbreak or spread of COVID-19: 15
 - (ii) avoiding, mitigating, or remedying the actual or potential adverse public health effects of the outbreak of COVID-19 (whether direct or indirect):
- (c) ~~in relation to any places, premises, craft, vehicles, or other things, to require specified actions to be taken, require compliance with any specified measures, or impose specified prohibitions that contribute or are likely to contribute to preventing, containing, reducing, controlling, managing, eliminating, or limiting the risk of the outbreak or spread of COVID-19, including (without limitation) by way of example under~~ **paragraph (ba)**, doing any of the following: 20
- (i) requiring any places, premises, craft, vehicles, or other things to be closed or only open if specified measures are complied with:
 - (ii) prohibiting any craft, vehicles, or other things from entering any port or place, or permitting the entry of any craft, vehicles, or other things into any port or place only if specified measures are complied with: 30
 - (iii) prohibiting gatherings of any specified kind in any specified places or premises, or in any specified circumstances:
 - (iv) requiring any places, premises, craft, vehicles, or other things to be isolated, quarantined, or disinfected in any specified way or specified circumstances: 35
 - (v) requiring the testing of any places, premises, craft, vehicles, or other things in any specified way or specified circumstances:
- (d) in relation to laboratories that undertake COVID-19 testing, by— 40
- (i) setting quality control measures and minimum standards:

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- (ii) requiring COVID-19 test results to be reported to the Director-General’s public health national testing repository:
- (iii) managing the supply of testing consumables (such as reagents and swabs) used by the laboratories:
- (iv) providing differently for different classes of testing laboratories (for example, different provisions for laboratories depending on whether they are funded publicly or privately): 5
- (e) requiring the owner or any person in charge of a specified laboratory that undertakes COVID-19 testing to—
 - (i) deliver or use, in accordance with directions given under the order, specified quantities of COVID-19 testing consumables that the Minister considers necessary for the purposes of the public health response to COVID-19: 10
 - (ii) undertake COVID-19 testing solely for the purposes of the public health response to COVID-19 while subject to the order, whether or not the laboratory is contracted by the Crown for that purpose. 15
- (2) An order made by the Minister may specify which breaches of an order made by the Minister or the Director-General are infringement offences for the purposes of **section 26(3)**, and may specify that a breach of an order is a particular class of infringement offence (with the corresponding penalties) for the purposes of regulations made under **section 33(1)(b)**. 20
- (3) For the purposes of this section and **section 12**, **things** includes animals, goods, businesses, records, equipment, and supplies.
- (4) All goods prohibited from import under a COVID-19 order are deemed to be included among goods prohibited from import under section 96 of the Customs and Excise Act 2018, and the provisions of that Act apply to those goods accordingly. 25
- (5) A COVID-19 order is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (6) If a COVID-19 order authorises the Director-General or chief executive to do anything specified in **section 12(1)(d)** by notice,— 30
 - (a) the notice is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements), unless it applies only to 1 or more named persons or things; and
 - (b) the order must contain a statement to that effect. 35

Legislation Act 2019 requirements for secondary legislation made under this section

| | | |
|---------------------|--|------------------|
| Publication | PCO must publish it on the legislation website and notify it in the <i>Gazette</i> | LA19 s 69(1)(c) |
| Presentation | The Minister must present it to the House of Representatives | LA19 s 114 |
| Disallowance | It may be disallowed by the House of Representatives | LA19 ss 115, 116 |

This note is not part of the Act.

8 New section 11A inserted (Compensation or payment relating to requisitions)

After section 11, insert:

11A Compensation or payment relating to requisitions

- (1) This section applies if an order is made under **section 11(1)(e)**. 5
- (2) The owner of a testing laboratory injuriously affected by the requisitioning of testing consumables is entitled to receive compensation from the Crown at the market rate for the consumables requisitioned.
- (3) The owner of a testing laboratory required to undertake COVID-19 testing solely for the purposes of the public health response to COVID-19 is entitled to be paid by the Crown for its services at the market rate for those services. 10
- (4) All questions and disputes relating to claims for compensation or payment under this section must be heard and determined by the District Court, whose decision is final.

9 Section 12 replaced (General provisions relating to COVID-19 orders) 15

Replace section 12 with:

12 General provisions relating to COVID-19 orders

- (1) A COVID-19 order may—
 - (a) impose different measures, including requirements, restrictions, directions, and conditions, for different circumstances and different classes of persons, places, premises, craft, vehicles, or other things: 20
 - (b) apply,—
 - (i) in relation to persons, generally to all persons in New Zealand or to any person or specified class of persons in New Zealand:
 - (ii) in relation to places, premises, craft, vehicles, or other things, to any class or to all of them: 25
 - (iii) in relation to anything else,—
 - (A) generally throughout New Zealand:
 - (B) in any area, however described:
 - (c) provide that any provision of a COVID-19 order (even if the provision is beneficial) does not apply in any specified circumstances, in any specified way, or to any specified persons, places, premises, craft, vehicles, or other things, or to any specified class of persons, places, premises, craft, vehicles, or other things: 30

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- (d) authorise the Director-General or the chief executive, subject to any criteria or conditions specified in the order, to do any of the following things by written notice:
- (i) specify, determine, designate, define, or approve any matters, impose conditions, or give directions, required for the operation of a provision of a COVID-19 order, including matters that affect or determine the application, operation, or scope of a provision: 5
 - (ii) determine that any provision of a COVID-19 order (even if the provision is beneficial) does not apply in any specified circumstances, in any specified way, or to any specified persons, places, premises, craft, vehicles, or other things, or to any specified class of persons, places, premises, craft, vehicles, or other things: 10
- (e) if any thing can be prohibited under **section 11**, permit that thing but only subject to specified conditions. 15
- (2) However, a COVID-19 order,— 15
- (aa) may not apply only to a specific individual:
- (a) if made by the Director-General, may apply only within the boundaries described under **section 10(a)**:
 - (b) may not be made under **section 11(1)(c)(i)** in relation to—
 - (i) any premises that are, or any part of any premises that is, used solely as a private dwellinghouse: 20
 - (ii) any premises that are, or are part of, a prison (within the meaning of section 3(1) of the Corrections Act 2004):
 - (c) may not be made under **section 11(1)(c)(i) or (iii)** in relation to—
 - (i) any premises within the parliamentary precincts (within the meaning of section 3 of the Parliamentary Service Act 2000): 25
 - (ii) any premises whose principal or only use is as a courtroom or Judge’s chambers or a court registry.
- (3) If a COVID-19 order or a notice referred to in **subsection (1)(d)** disapplies a provision or requirement of an order, subject to compliance with a stated condition, a person who breaches the condition must be treated as breaching that provision or requirement. 30
- (4) For the purposes of **subsection (1)(c) and (d)**, it does not matter how the disapplication of a provision of a COVID-19 order is expressed (for example, it may be expressed as an exemption, an exclusion, or an authority to do something that is otherwise prohibited by the order). 35

10 Section 13 amended (Effect of COVID-19 orders)

Replace section 13(1)(b) with:

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|-----------|---|-----------|
| (b) | it confers a discretion on any person, or allows any matter or thing to be granted, specified, determined, designated, defined, approved, or disapproved by any person, or allows a person to impose conditions or give directions, whether or not there are prescribed criteria. | |
| 11 | Section 21 amended (Power to give directions) | 5 |
| (1) | In section 21, after “a COVID-19 order”, insert “or a rule made under section 32Q ”. | |
| (2) | In section 21(a), after “the order”, insert “or rule”. | |
| 12 | Section 22 amended (Power to close roads and public places and stop vehicles) | 10 |
| (1) | In section 22(2), replace “authority” with “supervision”. | |
| (2) | After section 22(3), insert: | |
| (3A) | For the purpose of enforcing or monitoring compliance with a COVID-19 order that restricts movement by persons with or without vehicles, a constable may stop a vehicle <u>persons and vehicles</u> at any road block or checkpoint established for that purpose. | 15 |
| (3) | After section 22(4), insert: | |
| (5) | An enforcement officer may also stop a vehicle <u>persons and vehicles</u> for the purpose stated in subsection (3A) if acting under the supervision of a constable. | 20 |
| (6) | For the purpose of subsection (5) only, enforcement officer means a person authorised in accordance with section 18 who is— | |
| (a) | a member of the Armed Forces (as defined in section 2(1) of the Defence Act 1990): | |
| (b) | any person whom the Commissioner recognises as being— | 25 |
| (i) | a Māori warden; or | |
| (ii) | a nominated representative of an iwi organisation; or | |
| (iii) | a Pasifika warden; or | |
| (iv) | a community patroller. | |
| (7) | Section 18 applies with any necessary modifications for the purpose of subsection (6) . | 30 |
| 13 | Section 26 replaced (Offences relating to compliance with orders) | |
| | Replace section 26 with: | |
| 26 | Offences and infringement offences | |
| (1) | A person commits an offence if the person intentionally fails to comply with a COVID-19 order. | 35 |

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- (2) A person who commits an offence against **subsection (1)** is liable on conviction to,—
- (a) for an individual,—
 - (i) imprisonment for a term not exceeding 6 months; or
 - (ii) a fine not exceeding \$12,000: 5
 - (b) for any other person, a fine not exceeding \$15,000.
- (3) A person commits an infringement offence if the person—
- (a) does anything specified as an infringement offence in this Act or a COVID-19 order; or
 - (b) breaches a rule made under **section 32Q**. 10
- (4) A person who commits an infringement offence is liable to—
- (a) an infringement fee of,—
 - (i) for an individual, \$4,000 or any lesser or equal amount prescribed by regulations made under **section 33**; or
 - (ii) for any other person, \$12,000 or any lesser or equal amount prescribed by the regulations; or 15
 - (b) a fine imposed by a court not exceeding,—
 - (i) for an individual, \$12,000 or any lesser or equal amount prescribed by the regulations; or
 - (ii) for any other person, \$15,000 or any lesser or equal amount prescribed by the regulations. 20

14 Section 27 amended (Offences relating to exercise of enforcement powers)

Replace section 27(4) with:

- (4) A person who commits an offence against any of subsections (1) to (3) is liable on conviction to,—
- (a) for an individual,—
 - (i) imprisonment for a term not exceeding 6 months; or
 - (ii) a fine not exceeding \$12,000:
 - (b) for any other person, a fine not exceeding \$15,000. 25

15 Section 28 amended (Proceedings for infringement offences) 30

Replace section 28(2) with:

- (2) Proceedings commenced in the way described in subsection (1)(a) do not require the leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957.
- (3) *See* section 21 of the Summary Proceedings Act 1957 for the procedure that applies if an infringement notice is issued. 35

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| 16 | Section 32B amended (MIQF costs subject to recovery) | |
| | In section 32B, delete “relevant”. | |
| 17 | Section 32C amended (Criteria for cost recovery) | |
| | In section 32C, delete “relevant”. | |
| 18 | Section 32E amended (Persons in respect of whom prescribed charges payable) | 5 |
| (1) | Repeal section 32E(1)(a)(ii). | |
| (2) | Replace section 32E(2) with: | |
| (2) | An exempt person is a person who is, or is a member of a class of persons that is, exempted under regulations made under section 33A from paying the prescribed charges. | 10 |
| 19 | Section 32F amended (Exemptions, waivers, and refunds) | |
| | Replace section 32F(2) with. | |
| (2) | Regulations made under section 33A may authorise the Minister or the chief executive 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 by the Minister or the chief executive in doing so). | 15 |
| 20 | Section 32G amended (Payment of charge) | |
| | In section 32G(2), delete “of MBIE”. | 20 |
| 21 | Section 32H amended (Express authorisation for purpose of section 65K of Public Finance Act 1989) | |
| | In section 32H, replace “relevant Minister or the chief executive of MBIE” with “Minister or the chief executive”. | |
| 22 | New subpart 3B of Part 2 inserted | 25 |
| | After section 32I, insert: | |
| | Subpart 3B—Management of MIQFs and other places of isolation or quarantine | |
| | <i>Management of allocations</i> | |
| 32J | Interpretation | 30 |
| | In this subpart, unless the context otherwise requires,— | |
| | confirmed allocation means a confirmed allocation issued under the managed isolation allocation system to an MIQF | |

| | |
|--|----|
| managed isolation allocation system means a managed isolation allocation system operated by or on behalf of the New Zealand Government | |
| offline allocation means an allocation in the managed isolation allocation system than that is not an online allocation | |
| online allocation means an allocation obtained by registering on the managed isolation allocation system online portal and obtaining a voucher | 5 |
| New Zealander means a person who is a New Zealand citizen or residence class visa holder. | |
| 32K Chief executive responsible for operation of managed isolation allocation system | 10 |
| (1) The chief executive is responsible for the operation of the managed isolation allocation system. | |
| (2) The chief executive must ensure that the managed isolation allocation system does not at any time permit the issue of more confirmed allocations than the number of available allocations. | 15 |
| 32L Apportionment between allocations | |
| The Minister must determine the apportionment between the issue of online allocations and offline allocations. | |
| 32M Online allocations | |
| (1) Online allocations to MIQFs may be issued on a basis that the Minister decides. | 20 |
| (2) In making a decision under subsection (1) , the Minister must take into account— | |
| (a) the right of New Zealanders <u>under section 18(2) of the New Zealand Bill of Rights Act 1990</u> to enter New Zealand; and | 25 |
| (b) the need to mitigate, so far as possible, the social, economic, and other impacts of COVID-19. | |
| (3) The basis on which online allocations to MIQFs are issued may— | |
| (a) distinguish between different classes of persons entering New Zealand (for example, between New Zealanders and non-New Zealanders); and | 30 |
| (b) prioritise allocations as between different classes of persons; and | |
| (c) reserve for a particular class, or any classes, of persons a specific proportion of allocations. | |
| 32N Offline allocations for individuals and groups | |
| (1) Offline allocations to MIQFs may be issued to persons who meet the eligibility criteria determined by the Minister. | 35 |
| (2) An offline allocation may be— | |

| | | |
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| (a) | an individual offline allocation: | |
| (b) | a group offline allocation. | |
| (2A) | <u>In determining the eligibility criteria under subsection (1), the Minister must take into account—</u> | |
| (a) | <u>the right of New Zealanders under section 18(2) of the New Zealand Bill of Rights Act 1990 to enter New Zealand; and</u> | 5 |
| (b) | <u>the need to mitigate, as far as possible, the social, economic, and other impacts of COVID-19.</u> | |
| (3) | The chief executive must determine individual offline allocations on the basis of the eligibility criteria determined under subsection (1) for those allocations. | 10 |
| (4) | The Minister must determine group offline allocations on the basis of the eligibility criteria determined under subsection (1) for those allocations. | |
| (5) | The chief executive must publish on the responsible agency’s Internet site— | |
| (a) | the eligibility criteria determined under subsection (1) for individual offline allocations and group offline allocations; and | 15 |
| (b) | approved group offline allocations. | |
| 32O | Amendment and cancellation of allocations | |
| | The chief executive may at any time— | |
| (a) | amend an online or offline allocation issued to any person (for example, if the starting date for isolation specified in an offline allocation issued to an individual is required to be changed because of a travel delay): | 20 |
| (b) | cancel an online or offline allocation issued to any person (for example, if the person no longer requires the allocation, or can no longer use the allocation because of a cancelled flight). | 25 |
| | <i>Provisions relating to MIQFs or other places of isolation or quarantine</i> | |
| 32P | Restrictions on movement within MIQFs or other places of isolation or quarantine | |
| (1) | A person required under a COVID-19 order to reside for any period in an MIQF or other place of isolation or quarantine must remain in their room, except— | 30 |
| (a) | to do an activity (such as taking fresh air) authorised, and subject to any conditions imposed, by the chief executive; or | |
| (b) | if they need to leave to preserve or protect their own or another person’s life, health, or safety in an emergency; or | 35 |
| (c) | to attend any court, tribunal, New Zealand Parole Board hearing, or other judicial institution that they are required or permitted to attend by that institution; or | |

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- (d) if the chief executive is satisfied, on the basis of the advice of a suitably qualified health practitioner, that the person needs to leave—
- (i) to access medical services; or
 - (ii) to move to another place of isolation or quarantine (for example, for temporary or emergency care while the person is sick); or
- (e) if they are required to leave under Part 4 of the Health Act 1956; or
- (f) if they are required to move to another place of isolation or quarantine by—
- (i) a court order; or
 - (ii) any other obligation imposed under an enactment that is related to the detention of the person (for example, a direction of the New Zealand Parole Board or a probation officer); or
- (g) otherwise as permitted under a COVID-19 order.
- (2) However, a person leaving their MIQF or other place of isolation or quarantine under this section must comply with any directions of, or conditions imposed by, the chief executive.
- (3) The chief executive may choose not to exercise their power under **subsection (1)(a)** on any of the following grounds:
- (a) it is necessary to prevent the risk or spread of COVID-19 and the chief executive has consulted the Director-General;
 - (b) to ensure the health and safety of workers and returnees in an MIQF or other place of isolation or quarantine;
 - (c) to ensure the security of an MIQF or other place of isolation or quarantine.
- ~~(4) In deciding whether to restrict a person to their room in an MIQF or other place of isolation or quarantine, the chief executive may have regard to the operational and resourcing implications of the decision for the MIQF or other place of isolation and quarantine.~~
- ~~(4) In deciding whether to choose not to exercise their power under **subsection (1)(a)**, the chief executive—~~
- ~~(a) must consider the impact on the person’s rights and freedoms under the New Zealand Bill of Rights Act 1990; and~~
 - ~~(b) may have regard to the operational and resourcing implications of the decision.~~
- (5) A person who intentionally fails to comply with **subsection (1) or (2)** commits an offence and is liable on conviction to—
- (a) imprisonment for a term not exceeding 6 months; or
 - (b) a fine not exceeding,—
 - (i) for an individual, \$12,000; or

(ii) for any other person, \$15,000.

(b) a fine not exceeding \$12,000.

(6) A failure to comply with **subsection (1) or (2)** is an infringement offence.

32Q Chief executive may make rules

(1) The chief executive may make rules for the purpose of ensuring the effective and orderly operation of MIQFs, including (without limitation) rules— 5

(a) prohibiting or restricting (with or without conditions) the things (including alcohol, goods, and other items) that can be brought into, sent out of, or removed from an MIQF:

(b) restricting or prohibiting (with or without conditions) specified behaviour of persons within, or going to or from, an MIQF: 10

(c) specifying that a breach of a rule is a particular class of infringement offence (with the corresponding penalties) for the purposes of regulations made under **section 33(1)(b)**.

(2) The chief executive must be satisfied that the rules do not limit or are a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990. 15

(3) Rules made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication The maker must publish it in accordance with the Legislation (Publication) Regulations 2021 LA19 s 74(1)(aa)

Presentation The Minister must present it to the House of Representatives LA19 s 114

Disallowance It may be disallowed by the House of Representatives LA19 ss 115, 116

This note is not part of the Act.

32R ~~Power to seize and hold things~~ 20

(1) The chief executive may ~~seize and hold~~ anything that a person in isolation or quarantine in an MIQF possesses in the MIQF, or attempts to bring into the MIQF, in breach of rules made under **section 32Q** (for example, alcohol in excess of limits specified in the rules).

(2) The chief executive may ~~seize and hold~~ anything being delivered to a person staying in isolation or quarantine in an MIQF if the chief executive has reasonable grounds to believe the thing being delivered is not permitted under the rules. 25

(3) Anything held by the chief executive under this section may be held only for the duration of the person's stay in isolation or quarantine in the MIQF. 30

Complaints process

32S Complaints process relating to management of MIQFs

- (1) The chief executive must establish a complaints process that provides for the responsible agency to receive and investigate complaints from affected individuals about— 5
- (a) the operation and day-to-day running of an MIQF; or
 - (b) exemptions from any requirement to remain in an MIQF; or
 - (c) prescribed charges for MIQF costs; or
 - (d) MIQF allocations; or
 - (e) the managed isolation allocation system; or 10
 - (f) managed isolation and quarantine.
- (2) The chief executive must ensure that, as far as practicable, the process enables complaints to be dealt with fairly, efficiently, and effectively.
- (3) The chief executive must ensure that the complaints process is publicly available, by publishing details of the complaints process on the responsible agency's Internet site or in some other manner accessible to the public free of charge. 15

Information collection

32T Persons in respect of whom charges are payable to provide contact details

- (1) A person in respect of whom charges are payable under section 32E must provide the responsible agency with the following contact information about the person liable to pay the prescribed charges for MIQF costs for the purpose of invoicing prescribed charges for MIQF costs those charges: 20
- (a) their full name as it appears on their passport (as it appears on their passport, if the person liable to pay is an individual): 25
 - (b) a phone number on which they can be contacted:
 - (c) an email address at which they can be contacted:
 - (d) their contact address.
- (2) ~~If the person's contact details change before they pay their prescribed charges, they must update those details as soon as practicable.~~ 30
- (2) If the contact information required by **subsection (1)** changes before the prescribed charges are paid, the person responsible must provide those updated details as soon as practicable to the responsible agency.
- (3) A failure to comply with **subsection (1) or (2)** is an infringement offence.

23 Section 33 replaced (Regulations) 35

Replace section 33 with:

33 Regulations

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—
- (a) prescribing penalties for infringement offences, which,—
 - (i) in the case of infringement fees, must not be more than—
 - (A) \$4,000, for an individual; or
 - (B) \$12,000, for any other person; and
 - (ii) in the case of fines, must not be more than—
 - (A) \$12,000, for an individual; or
 - (B) \$15,000, for any other person:
 - (b) prescribing different penalties for different infringement offences or classes of infringement offences, defined in any way (including by the seriousness of the offence or whether it is a repeat offence), so that (for example)—
 - (i) the regulations may prescribe a fixed infringement fee or fine, or different infringement fees or fines, for an infringement offence under **section 32P(6) or 32T(3)**:
 - (ii) a COVID-19 order may specify that an infringement offence specified in a COVID-19 order belongs to a certain class (with corresponding penalties):
 - (iii) a rule made under **section 32Q** may specify that an infringement offence for a breach of the rule belongs to a certain class (with corresponding penalties):
 - (c) prescribing the form of infringement notices and reminder notices, and the information to be included in the notices:
 - (d) providing for anything that this Act says may or must be provided for by regulations:
 - (e) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act.
- (1A) Before recommending that regulations be made under **subsection (1)(a) or (b)**, the Minister must consider, if relevant,—
- (a) the severity and impact of the breaches specified as infringement offences or classes of infringement offences; and
 - (b) the appropriateness of the penalty for any group likely to be affected by the specified offences or specified classes of offences, including equity considerations; and
 - (c) penalties for comparable offences or classes of offences in other legislation (if any).

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(No 2)**

Part 1 cl 24

- (2) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

| | | |
|----------------------------|--|-------------------------|
| <u>Publication</u> | <u>PCO must publish it on the legislation website and notify it in the Gazette</u> | <u>LA19 s 69(1)(c)</u> |
| <u>Presentation</u> | <u>The Minister must present it to the House of Representatives</u> | <u>LA19 s 114</u> |
| <u>Disallowance</u> | <u>It may be disallowed by the House of Representatives</u> | <u>LA19 ss 115, 116</u> |

This note is not part of the Act.

24 Section 33A amended (Regulations relating to cost recovery)

In section 33A(1), replace “relevant Minister made after consultation with the Minister (as defined in this Act)” with “Minister”.

5

25 New sections 33B and 33C inserted

After section 33A, insert:

33B Incorporation of material by reference in COVID-19 orders

- (1) The following standards, requirements, recommended practices, or material that is relevant to the purpose of this Act may be incorporated by reference into any COVID-19 order or other secondary legislation (an **instrument**) made or given under this Act: 10
- (a) standards, requirements, or recommended practices published by or on behalf of any body or person in New Zealand or in any other country:
 - (b) standards, requirements, or recommended practices of international or national organisations: 15
 - (c) standards, requirements, or recommended practices of any country or jurisdiction:
 - (d) any other material that, in the opinion of the Minister (or, as appropriate, the Director-General), is too large or impractical to be printed as part of the instrument concerned. 20
- (2) Material may be incorporated in an instrument in whole or in part, and either unmodified or with any additions, omissions, or variations that are specified in the instrument.
- (3) Material that is incorporated by reference in an instrument is to be treated for all purposes as forming part of that instrument. 25
- (4) Every reference in an instrument to the current edition of any standard work of reference is, unless the instrument otherwise specifies, to be construed at any particular time as the latest edition of that work available at that time, together with any amendments, additions, and deletions made to or from it up to that time. 30
- (5) If any amendment to material incorporated by reference under this section (other than to any standard work of reference) is made, that amendment does

not take effect until the date specified for that purpose by the Director-General by notification in the *Gazette*.

- (6) An instrument that incorporates material by reference under this section must state where the material can be accessed in accordance with **section 33C(3)**.
- (7) A **standard work of reference** is a work of reference that the Director-General considers is recognised either domestically by the Ministry of Health, or internationally, as one to refer to on its subject matter. 5

33C Availability and proof of material incorporated by reference

- (1) If material (other than a standard work of reference) is incorporated by reference in an instrument under **section 33B**, a copy of the material and any amendment to the material must be— 10
- (a) certified as a correct copy of the material by the Director-General; and
 - (b) retained by the Director-General.
- (2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient evidence of the incorporation in the instrument of that material. 15
- (3) The Director-General must—
- (a) make copies of all material incorporated in an instrument by reference available for inspection, free of charge, at the head office of the Ministry of Health and at other places that the Director-General determines are appropriate; and 20
 - (b) make copies of the material available, free of charge, on an Internet site maintained by or on behalf of the Ministry of Health; and
 - (c) either make copies of the material available for purchase, at reasonable cost, or advise where copies of the material may be obtained. 25
- (4) The Director-General may comply with **subsection (3)(b)** by providing a hypertext link from an Internet site maintained by or on behalf of the Ministry of Health to a copy of the material that is available, free of charge, on an Internet site maintained by or on behalf of someone else.
- (5) The Director-General is not required to comply with **subsection (3)(b) or (c)** if doing so would infringe copyright in the material or be inconsistent with any other enactment or rule of law. 30

25A New section 34A inserted (Protection of contact tracing information)

After section 34, insert:

34A Protection of contact tracing information 35

- (1) Despite anything in the Privacy Act 2020, personal information about an identifiable individual that is provided or obtained for the purpose of contact tracing under this Act (such as through QR scans or paper-based forms) may not be

- collected, used, or disclosed by anyone except for the purpose of contact tracing under this Act or for the purposes of the Health Act 1956.
- (2) Nothing in this section limits the right of an individual to access or disclose information about them under the Privacy Act 2020 or any other Act.
- (3) A person who intentionally fails to comply with **subsection (1)** commits an offence. 5
- (4) A person who commits an offence against **subsection (3)** is liable on conviction to,—
- (a) for an individual,—
- (i) imprisonment for a term not exceeding 6 months; or 10
- (ii) a fine not exceeding \$12,000;
- (b) for any other person, a fine not exceeding \$15,000.

26 Schedule 1 amended

- (1) In Schedule 1, clause 5(3), delete “of MBIE”.
- (2) In Schedule 1,— 15
- (a) insert the Part set out in **Schedule 1** of this Act as the last Part; and
- (b) make all necessary consequential amendments.

26A Consequential amendments to secondary legislation

Amend the legislation specified in **Schedule 1A** as set out in that schedule.

Part 2 20

Consequential amendments to other Acts to Summary Proceedings Act 1957

Amendment to Summary Proceedings Act 1957

27 Principal Act

Section 28 amends the Summary Proceedings Act 1957. 25

28 Section 2 amended (Interpretation)

In section 2(1), definition of **infringement notice**, after paragraph (jg), insert:

(jh) section 30 of the COVID-19 Public Health Response Act 2020; or

Amendment to Secondary Legislation Act 2021

29 Principal Act 30

Section 30 amends the Secondary Legislation Act 2021.

30 Schedule 14 amended

~~In Schedule 14, repeal the items relating to sections 11 and 33 of the COVID-19 Public Health Response Act 2020.~~

Schedule 1
New Part 2 inserted into Schedule 1

s 26

| | | |
|---|---|----|
| Part 2 | | |
| Provisions relating to COVID-19 Public Health Response Amendment Act (No 2) 2021 | | 5 |
| 6 | Interpretation | |
| | In this Part,— | |
| | amendment Act means the COVID-19 Public Health Response Amendment Act (No 2) 2021 | 10 |
| | commencement means the date appointed under section 2(1) for the commencement of new section 26(4) | |
| | new section 26(4) means section 26(4) as set out in section 13 of the amendment Act. | |
| 7 | Penalties for infringement offences committed before commencement | 15 |
| | A person who commits an infringement offence under this Act before commencement is liable to— | |
| | (a) an infringement fee of \$300; or | |
| | (b) a fine imposed by a court not exceeding \$1,000. | |

Schedule 1A
Amendments to secondary legislation

s 26A

Part 1

Amendments to COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 5

Regulation 3(1)

In regulation 3(1), replace the definition of **chief executive** with:

chief executive has the same meaning as in section 5(1) of the Act

Regulation 10A 10

In the heading to regulation 10A, delete “**Relevant**”.

In regulation 10A(2) and (3), delete “relevant”.

Regulation 10B

In the heading to regulation 10B, delete “**Relevant**”.

In regulation 10B(2) and (3), delete “relevant”. 15

Regulation 12(3)

In regulation 12(3), replace “Ministry of Business, Innovation, and Employment” with “responsible agency”.

Part 2

Amendments to COVID-19 Public Health Response (Air Border) Order (No 2) 2020 20

Clause 4(1)

In clause 4(1), definition of **confirmed allocation**, replace “clause 15H of the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020” with “**section 32J** of the Act”. 25

In clause 4(1), definition of **managed isolation allocation system**, replace “clause 15H of the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020” with “**section 32J** of the Act”.

Clause 8(3A)

In clause 8(3A), delete “of MBIE”. 30

Part 3**Amendments to COVID-19 Public Health Response (Isolation and Quarantine) Order 2020****Clause 4(1)**

In clause 4(1), definition of **high-risk MIQF**, delete “of MBIE”. 5

In clause 4(1), definition of **low-risk MIQF**, delete “of MBIE”.

Clause 8

Revoke clause 8(2).

Clause 10

In clause 10(1)(a) and (b), delete “of MBIE”. 10

Clause 11

In clause 11(4)(a)(ii), (4C), and (4D), delete “of MBIE”.

Clause 12

In clause 12(1)(a) and (3), delete “of MBIE”.

Clause 13 15

Replace clause 13 with:

13 Leaving place of isolation or quarantine

(1) A person is permitted to leave their room at their place of isolation or quarantine to visit a fellow resident.

(2) A person leaving their room at their place of isolation or quarantine under this clause must comply with any directions of, or conditions imposed by, the chief executive. 20

Clause 14

In clause 14(1)(a), replace “clause 13(b) to (f)” with “**section 32P(1)(b) to (f)** of the Act”. 25

In clause 14(2)(a) and (b) and (3), delete “of MBIE”.

Clause 15

In clause 15(1) and (2)(c)(i), delete “of MBIE”.

Clause 15GA

In clause 15GA, revoke the definition of **chief executive**. 30

Subpart 1 of Part 2

Revoke subpart 1 of Part 2.

Clause 16

In clause 16, delete “of MBIE”.

Part 4

Amendment to COVID-19 Public Health Response (Vaccinations)
Order 2021

5

Clause 9(5)(a)

In clause 9(5)(a), replace “Ministry of Business, Innovation, and Employment” with “responsible agency”.

Legislative history

21 September 2021

Introduction (Bill 68–1)

29 September 2021

First reading and referral to Health Committee