

In Confidence

Office of the Minister of Housing
Chair, Cabinet Legislation Committee

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

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020.

Executive summary

- 2 With Power to Act, Cabinet Social Wellbeing Committee (SWC) and Cabinet Legislation Committee (LEG) have agreed to amend the COVID-19 Public Health Response Act 2020 (COVID-19 Act) to establish a legal basis for managed isolation and quarantine (MIQ) charges.
- 3 To give effect to these decisions, I have introduced the COVID-19 Public Health Response Amendment Bill to the House. This provides a framework empowering the relevant Minister to prescribe charges through regulations for people arriving in New Zealand who enter (or elect to enter) MIQ at a government-managed facility (unless they are exempt or have their fees waived).
- 4 Cabinet has agreed in principle to many of the details of the regulations, subject to consultation with the New Zealand Law Society, the Human Rights Commission, and appropriate stakeholders to reflect the Treaty of Waitangi partnership. I have now completed this consultation.
- 5 I am seeking authorisation to submit the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 to Executive Council.
- 6 The regulations set charges as follows (including GST):
 - 6.1 \$3,100 for the first person in a room;
 - 6.2 \$950 for each additional adult;
 - 6.3 \$475 for each additional child who is aged 3 to under 18 years (at time of check in);
 - 6.4 \$0 for a child who is under 3 years of age.

- 7 New Zealanders¹ will be exempt from charges if:
- 7.1 They last departed New Zealand before 11 August 2020 (ie before the regulations come into force), and
 - 7.2 They are returning to New Zealand for more than 90 days.
- 8 People coming in as critical health workers and other critical workers will always have to pay for MIQ. Other temporary visa holders will generally be liable to pay charges unless they were ordinarily resident in New Zealand on 19 March 2020 and departed New Zealand on or before that date.
- 9 It will be possible to apply to the chief executive of the Ministry of Business, Innovation and Employment for a waiver from the charges in cases of financial hardship or where there are other special circumstances (eg compassionate grounds). Critical health workers and other critical workers will not be able to apply for a waiver.
- 10 The proposed MIQ charges limit section 18 of the New Zealand Bill of Rights Act 1990 by making returning to New Zealand significantly more expensive. Some New Zealanders may decide not to return or delay returning until they can afford to pay for MIQ. Other New Zealanders currently in New Zealand may decide not to leave.
- 11 However, I consider that the limit on section 18 is justifiable. The proposed regulations include a range of measures to mitigate the impact on New Zealanders and to impair rights and freedoms as little as possible to achieve the objective (including exemptions, waivers, and flexibility in payment periods).

Policy

- 12 On 22 July 2020, the Cabinet Social Wellbeing Committee (SWC) with Power to Act agreed to amend the COVID-19 Public Health Response Act 2020 to establish a legal basis for managed isolation and quarantine (MIQ) charges [CAB-20-MIN-0352.02].
- 13 SWC also agreed that the following people would be exempt from charges [CAB-20-MIN-0352.02]:
- 13.1 foreign diplomatic and consular personnel (including their recognised family members) who agree to enter MIQ;
 - 13.2 officials of foreign governments conducting business with the New Zealand Government or transiting through New Zealand on official government-to-government business;

¹ This means New Zealand citizens (including those in the Cook Islands, Niue and Tokelau) and residence class visa holders. It also includes Australian citizens ordinarily resident in New Zealand and Australian permanent residents ordinarily resident in New Zealand.

- 13.3 refugees, including claimants, protected persons and applicants under the special category for victims of domestic violence;
- 13.4 any person travelling to New Zealand for the sentencing of the accused in the Christchurch mosque attacks.
- 14 On 28 July 2020, the Cabinet Legislation Committee (LEG) with Power to Act agreed to introduce the COVID-19 Public Health Response Amendment Bill to the House, which creates a legal basis for charging for MIQ [LEG-20-MIN-0127].
- 15 LEG agreed that the following people would be exempt from charges [LEG-20-MIN-0127]:
 - 15.1 any temporary visa holder who:
 - 15.1.1 as of 19 March 2020, had been ordinarily resident in New Zealand in the prior 12 months; and
 - 15.1.2 who departed New Zealand on or before 19 March 2020; and
 - 15.1.3 who is not entering New Zealand on a border exception as a “critical worker” [CAB-20-MIN-0268];
 - 15.2 any New Zealand citizens or residence class visa holders, or any Australian citizens or Australian permanent residents who are ordinarily resident in New Zealand, if they are returning to New Zealand for at least 90 days, as a measure of whether they are returning on a temporary basis;
 - 15.3 partners, any dependent children and legal guardians who are isolating or travelling with someone who is exempt from paying MIQ charges.
- 16 LEG also agreed the following charging details in principle [LEG-20-MIN-0127]:
 - 16.1 Charges will be \$3,100 (including GST) for a single person occupying a room, \$950 for each additional adult occupying that same room, and \$475 for each additional child occupying that same room.
 - 16.2 The child rate will apply to children aged over 3 years and under 18 years of age (at the time of check-in).
 - 16.3 Children under 3 years of age will not be charged a fee.
 - 16.4 Regulations will allow the chief executive of the Ministry of Business, Innovation and Employment (MBIE) to waive fees in full if an applicant has cash assets under \$8,000 for a single person and under \$16,000 for a couple or sole parent.
 - 16.5 The chief executive of MBIE will be able to waive fees in full or part if they consider that undue financial hardship will be caused by having to

pay MIQ charges, or in any circumstances for which they consider a full or partial waiver to be appropriate.

- 17 In addition to the previously agreed matters, I seek approval today of the following:
- 17.1 any New Zealander entering New Zealand after the regulations come into force should be liable for charges unless they:
 - 17.1.1 left New Zealand before the regulations come into force; and
 - 17.1.2 are returning for at least 90 days.
 - 17.2 The following people should be exempt from charges:
 - 17.2.1 any person entering New Zealand after a rescue at sea;
 - 17.2.2 any person entering New Zealand after a medical air transfer;
 - 17.2.3 any person entering MIQ to care for a person who is exempt from charges;
 - 17.2.4 any patients travelling as part of the Ministry of Health's High Cost Treatment Pool and the Ministry of Foreign Affairs and Trade's New Zealand Medical Treatment Scheme;
 - 17.2.5 New Zealand citizens, ordinarily resident in the Cook Islands, Niue or Tokelau, who are travelling to New Zealand for medical treatment;
 - 17.2.6 New Zealand citizens, ordinarily resident in the Cook Islands, Niue or Tokelau, travelling from a third country, through New Zealand (staying less than 90 days), in order to return to the Cook Islands, Niue or Tokelau (staying at least 90 days);
 - 17.2.7 deportees, defined as "returning offenders" in the Returning Offenders (Management and Information) Act 2015 and any New Zealander who is being deported from Australia.
 - 17.3 Subject to the Bill having received Royal assent before the regulations are made, the regulations should come into force at 12.01 am the day after they are made (eg on 11 August 2020 if they are made on 10 August 2020). They should apply to anyone who is on an aircraft that departs for New Zealand after that time, or who otherwise enters New Zealand or elects to go into MIQ after that time. This means regulations will not apply to anyone who is on board an aircraft for a flight to New Zealand which has departed on or before 10 August 2020 (if the regulations come into force at 12.01 am on 11 August 2020).
 - 17.4 The child rate should apply to children aged 3 to 17 years inclusive. Children under 3 years of age will not be charged. Previously, I had

said the child rate would apply to children over 3, instead of saying it would apply to children aged 3 as well.

- 17.5 Remove the cash asset threshold (\$8,000 for a single person or \$16,000 for a couple/sole parent) for full waivers. This is because a cash asset test does not account for substantial non-cash assets and high income a person might have. Instead, the chief executive of MBIE may consider a person's income, outgoings, assets and liabilities when deciding whether having to pay the charges would cause undue financial hardship. They could then grant a full or partial waiver if they consider it would cause undue financial hardship.
- 17.6 The chief executive of MBIE may also waive charges in whole or in part if they consider it justified by special circumstances. Special circumstances which might justify a waiver could include the following:
 - 17.6.1 a New Zealander having to go into MIQ because they left New Zealand to accompany a vulnerable person back to New Zealand;
 - 17.6.2 any person needing to travel to or from New Zealand to receive medical treatment;
 - 17.6.3 other compassionate grounds, including when a person has travelled to visit a seriously ill or dying close relative or attend a funeral or tangihanga (whether in New Zealand or overseas).

Timing and 28-day rule

- 18 A waiver of the 28-day rule is sought so the regulations can come into force on 11 August 2020 at 12.01 am, or at the first available Executive Council after the COVID-19 Public Health Amendment Bill receives Royal assent, if granted after 10 August 2020. It is important that the charges should come into force as soon as possible to minimise the impact on the sustainability of MIQ.
- 19 The public has been given warning since the announcement on 29 July 2020 that the charges will be commencing shortly.

Compliance

- 20 The regulations comply with the following:
 - 20.1 the principles of the Treaty of Waitangi;
 - 20.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 (these are discussed further at paragraphs 37 – 52) and the Human Rights Act 1993;
 - 20.3 the principles and guidelines set out in the Privacy Act 1993;

20.4 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Compliance with the principles of the Treaty of Waitangi

- 21 In relation to the Treaty of Waitangi, there may be an argument that the regulations impede the access of Māori to New Zealand and therefore do not comply with the Treaty of Waitangi. Inhibited or delayed access of Māori to New Zealand may negatively impact the ability of Māori to exercise tino rangatiratanga and kaitiakitanga rights and responsibilities.
- 22 Closely related to the Treaty of Waitangi and human rights implications are potential implications under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Article 36 protects the right of indigenous peoples to maintain and develop relationships and contacts with members of their community, and other communities, within or outside their country. This includes activities and relations for spiritual, cultural, political, economic and social purposes.
- 23 There are a significant number of Māori living in Australia. Māori who return temporarily to New Zealand, for example for tangihanga or visiting whanau, would face increased travel expenses in order to fulfil their responsibilities. The charges may prevent, delay or otherwise inhibit the ability of Māori to maintain and develop relationships across the New Zealand border.
- 24 I consider that not requiring payment ahead of travel, the proposed ability to pay through instalments or to have fees waived in certain circumstances means that charges do not create a significant barrier to Māori temporarily returning to New Zealand. Māori who return permanently to New Zealand would not be required to pay MIQ charges, on their first return.

Compliance with relevant international standards and regulations

- 25 Article 12(4) of the International Covenant on Civil and Political Rights, which New Zealand has ratified, provides that no one shall be arbitrarily deprived of the right to enter their own country. Charges for MIQ limit this right. However, I consider the limitation to be reasonable in the circumstances, for the reasons set out in paragraphs 37 – 52 below.
- 26 The United Nations Convention on the Rights of the Child, which New Zealand has also ratified, provides a child the right to leave and enter their own country, where their parents may reside in different states (article 10). Charging children who go into MIQ after entering New Zealand, where they are travelling for family reunification or to maintain personal relations and direct contact with their parents, could limit this right. That is because the regulations set charges for the first (or only) person in a room of \$3,100, which could be a child travelling or isolating alone. In a situation where a child

is travelling unaccompanied,² and enters MIQ without a guardian, they would be charged this single person rate. The regulations also set out that where there is an unaccompanied child in MIQ, the child's guardians are liable for the charges payable in respect of the child (even if they are not travelling or isolating with the child) rather than the child themselves.

- 27 I consider charging the parents or guardians of children who may be the sole occupant of a room to be reasonable in the circumstances. There is a broad discretion to waive charges in special circumstances if children are travelling alone.

Statutory prerequisites before making the regulations

- 28 The COVID-19 Public Health Response Amendment Bill requires that before I can recommend making regulations which set charges for MIQ, I must be satisfied of the following matters:

- 28.1 the charges concerned relate to MIQF costs (including direct and indirect costs); and
- 28.2 the prescribed charges recover from any class of persons no more than an estimate of the actual and reasonable MIQF costs incurred in relation to that class (including both direct and indirect costs); and
- 28.3 there is appropriate provision to grant relief from the payment of the prescribed charges in circumstances where payment of the charges would cause undue financial hardship; and
- 28.4 the prescribed charges do not limit or are justified limits on the rights and freedoms in the New Zealand Bill of Rights Act 1990.

- 29 I am satisfied that these prerequisites are met.

Charges relate to MIQ costs and are not more than actual and reasonable MIQ costs

- 30 The proposed charges are set as follows:

- 30.1 The charge for the first person in the room is set below the accommodation (room) and food costs at the lowest cost MIQ facility. It represents less than half of the average total cost.
- 30.2 The additional charges for adults and children are set below the food costs charged by the lowest food costs at an MIQ facility.

- 31 There are many other ancillary costs involved in MIQ (that are not publically funded services, like health and social services). The proposed charges do not take into account these costs, such as transportation (eg when travellers need to be transported to an MIQ facility in a different city to where they

² In practice, a child travelling unaccompanied is likely to be relatively rare, and children 14 or under can only stay in MIQ where they are accompanied. Where children are over 14 it is possible for them to stay unaccompanied in an MIQ facility. I envisage that most children who travel unaccompanied would be joined by a guardian in the MIQ facility.

landed), laundry costs, additional security and MBIE's operational costs. These additional direct and indirect costs mean that the proposed charges, which were calculated only on the basis of food and accommodation costs, will fall below the actual costs incurred.

- 32 These charges will need to be regularly reviewed (eg if there are new MIQ facilities) to ensure that they continue to meet the criteria in the Bill.

Provisions to grant relief from payment of charges in cases of undue financial hardship

- 33 I am seeking your agreement that the chief executive of MBIE may waive, in full or part, charges because of undue financial hardship (including considering a person's income, outgoings, assets and liabilities) and when they consider it justified by special circumstances.
- 34 Waivers will be assessed on a case-by-case basis. The proposed settings will allow the chief executive to take into account a wide range of circumstances when making decisions. While this will make waiver decisions more complex and more open to challenge, the decisions would be more likely to be justified as fair and reasonable in each and every case.
- 35 The regulations will also specify that payment is due up to 90 days after a person leaves MIQ and the chief executive would be able to agree to payments being made by instalment.
- 36 MBIE will conduct an awareness campaign to ensure people know that they can apply for a waiver. People entering MIQ will be provided with information about the waiver process and criteria.

Compliance with the New Zealand Bill of Rights Act 1990

- 37 To make regulations under the Bill, I must be satisfied that the prescribed charges are a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990 (BORA).
- 38 In general, there is an obligation to ensure that policy is consistent with, and does not infringe upon, rights or freedoms guaranteed under BORA. However, a reasonable limit on a BORA right or freedom may be warranted if the objective of the proposed measure is sufficiently important in a free and democratic society. If a sufficiently important objective is established, the measures adopted to achieve the objective must be rationally connected to the objective, impair the relevant right or freedom as little as possible, and the effects of the limitation should be proportionate to the objective.
- 39 Prescribing charges for MIQ engages section 18 of BORA, which provides that every New Zealand citizen has the right to enter and leave New Zealand. The proposed charges limit section 18 by significantly increasing the costs of returning to New Zealand. For many people, the charge will be a significant financial outlay. However, I consider the limitations on section 18 are justified on the following basis:

- 39.1 The objective of enabling the government to recover some of the costs of MIQ services to make the provision of MIQ services more financially sustainable is sufficiently important.
- 39.2 The prescribed charge is rationally connected to that objective, is proportionate and reflects as little an impairment as possible, in particular by:
- 39.2.1 ensuring the charges reflect no more than the actual and reasonable costs of persons stay in MIQ;
 - 39.2.2 enabling some classes of people to be exempt from the charges;
 - 39.2.3 providing for waivers where people are experiencing undue financial hardship; and
 - 39.2.4 providing flexibility for people to pay the charges, including providing adequate time for people to pay and enabling the payment of charges by instalment.
- 40 The prescribed charges have also been considered as part of the broader MIQ system, recognising that the range of measures currently or planned to be in place (including arrangements with airlines and the booking system) have a cumulative impact on New Zealanders' BORA right to return.
- 41 The criteria for charges also distinguish between temporary visa holders (who are required to pay in most cases) and New Zealand citizens and permanent residents (who are treated as exempt unless they are required to pay). Temporary visa holders are not New Zealand nationals, and therefore the policy has a differential impact on the basis of nationality. This policy therefore limits the right to freedom from discrimination in section 19 of BORA.
- 42 However, I consider this difference in treatment is justified. Temporary visa holders do not have the same right to return to New Zealand as New Zealand citizens do under section 18. It is also lawful under the Immigration Act 2009 to add new conditions to a temporary visa affecting their ability to enter New Zealand and the costs of doing so. In my view it is justifiable to expect temporary visa holders to pay their MIQ costs in order to achieve the objective of making MIQ more financially sustainable. Where temporary visa holders are entering for work purposes, I expect that the additional costs of MIQ can often be met by their employers.

(a) Is the objective of charging sufficiently important?

- 43 MIQ has proven to be a highly effective way of preventing COVID-19 from re-entering the community. However, there are high costs associated with MIQ. The objective of the prescribed charge is to ensure the provision of MIQ services are more financially sustainable, by enabling the Government to recover some of the associated costs.

- 44 COVID-19 is a global pandemic and the World Health Organisation reports sustained exponential growth in cases worldwide. In New Zealand, community transmission has been eliminated. With respect to COVID-19, the greatest threat to the health of New Zealanders comes from the introduction of COVID-19 through the border.
- 45 There is no known domestic transmission of COVID-19 in New Zealand at present, and there have been no locally-acquired cases for over 90 days. All confirmed cases in June and July 2020 were linked to international travel and stays in MIQ. There are significant public health, social and economic benefits to maintaining the effectiveness of the MIQ system.
- 46 MIQ is a costly intervention. There are currently around 7,000 spaces in MIQ facilities across New Zealand. So far, the Government has set aside a total of \$479 million dollars to pay for the costs of Managed Isolation facilities until the end of the year.
- 47 Therefore, the objective of ensuring the provision of MIQ services are more financially sustainable, by enabling the Government to recover some of the costs through a prescribed charge, is considered a sufficiently important objective to justify a reasonable and proportionate limitation on the right to return. These rules and MIQ capacity currently constrain the numbers returning who will pay, and the revenue that will be generated, but these constraints could change in future.
- 48 The policy has a secondary objective of lowering demand for MIQ services related to short-term travel. Those who are travelling to New Zealand for a short period of time or who leave New Zealand following the introduction of the legislation will be liable for charges. People most likely to be liable for the prescribed charge will therefore be people looking to undertake short-term travel (eg for holiday or business purposes).
- 49 The impact of the charging criteria may deter those people from undertaking short-term travel, which also limits section 18 of BORA. It also appears to favour those choosing to repatriate to New Zealand over those travelling to New Zealand for a short time (noting, however, waivers will continue to apply). In the context of the global pandemic, the increasing number of cases worldwide, ongoing travel advisories, and the need to protect the public health of New Zealand, I consider that the impact the prescribed charge might have on short-term travel is reasonable.

(b) Are charges connected to the objective, proportionate, and as little an impairment on the right as possible?

- 50 The proposed charge for MIQ is rationally connected to the objective as it enables the Government to recover some of the costs of providing MIQ services, making the provision of MIQ services able to be more financially sustainable. It shares the costs of MIQ services between individuals and the Crown, with people arriving making a partial contribution towards the costs of MIQ, while public health and welfare services continue to be paid entirely by the Crown.

- 51 The proposed MIQ charges limit section 18 of BORA by making returning to New Zealand significantly more expensive. Some New Zealanders may decide not to return or delay returning until they can afford to pay for MIQ. Other New Zealanders currently in New Zealand may decide not to leave.
- 52 However, I consider that the limit on section 18 is justifiable. The proposed regulations include a range of measures to mitigate the impact on New Zealanders and to impair rights and freedoms as little as possible to achieve the objective, including:
- 52.1 charging no more than actual and reasonable costs incurred by persons entering MIQ;
 - 52.2 exempting some classes of people from MIQ charges, in particular people who need to repatriate to New Zealand on a permanent basis;
 - 52.3 providing for waivers (in full or part) where people are experiencing undue financial hardship; and
 - 52.4 providing flexibility for people when paying charges, including providing adequate time for people to pay and enabling the payment of charges by instalment.

Regulations Review Committee

- 53 I do not consider there are grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel

- 54 The draft regulations were certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet, subject to the following:
- 54.1 the COVID-19 Public Health Response Amendment Act 2020 has received Royal assent before these regulations are made; and
 - 54.2 the statutory prerequisites relating to regulations in the COVID-19 Public Health Response Amendment Act 2020 are met; and
 - 54.3 the granting of a waiver of the 28-day rule to allow the regulations to come into force on 11 August 2020.

Impact analysis

- 55 Cabinet's Impact Analysis requirements apply to the proposals. The proposals in the paper relate to the government's response to the COVID-19 outbreak, but do not qualify for an exemption as they are not urgently required to be effective. As no Regulatory Impact Statement has been provided, the Cabinet's Impact Analysis rules require preparation of a Supplementary Analysis Report.

- 56 The introduction of co-payments is part of a broader set of proposals on the management of New Zealand's borders during the COVID-19 pandemic that are being proposed and assessed separately. A fragmented impact assessment of these proposals limits the understanding of their interactions and potential alternatives and may create unintended consequences. The Treasury recommends that the Supplementary Analysis Report is integrated into a more comprehensive analysis of the suite of border management proposals.

Publicity

- 57 Subject to the Bill having received Royal assent by 10 August 2020, I intend to make a public announcement when the regulations are submitted to Executive Council after Cabinet on Monday, 10 August 2020.

Proactive release

- 58 I intend to proactively release the paper, with any redactions which are appropriate under the Official Information Act 1982, after I have submitted the regulations to Executive Council and as part of the Government's COVID-19 proactive releases.

Consultation

- 59 The following agencies were consulted: Ministry of Health, Department of Prime Minister and the Cabinet (Policy Advisory Group), DPMC (COVID-19 AOG Response), Crown Law, Ministry of Justice, Parliamentary Counsel Office, Treasury, Ministry of Transport, Ministry of Foreign Affairs and Trade, Customs, Te Puni Kōkiri, Te Arawhiti, Ministry of Social Development, Inland Revenue.
- 60 I have undertaken consultation on the proposed content of the regulations with the Human Rights Commission and appropriate stakeholders to reflect the Treaty partnership. Stakeholders raised concerns that were both substantive (in relation to the proposal itself) and procedural (in relation to the speed of legislative change and perceived lack of consultation).
- 61 The Human Rights Commission supported the opportunity for charges to be waived. It expressed concerns about the disproportionate impact charging would have on people who were not exempt if they were financially disadvantaged and on people's credit ratings. It was concerned that charging might not be seen as a reasonable limit on rights by the United Nations Human Rights Committee.
- 62 Officials and a small group of iwi representatives with an interest in the COVID-19 response discussed the proposed MIQ charges regulations. These stakeholders identified that the implementation of waivers could be problematic because decision-making could discriminate against Māori, the grounds did not explicitly take into account broader considerations such as ahi kā (the need to keep home fires burning) or practices and obligations associated with tangihanga. Māori stakeholders considered the proposals did

not reflect the Crown's obligations under the Treaty of Waitangi. They have offered constructive suggestions for how operationalisation can take into account impacts on Māori and tikanga Māori. Officials will need to ensure that operational decisions reflect Treaty of Waitangi obligations.

- 63 There was strong feedback from the Māori stakeholders I consulted that the Bill should include a Treaty of Waitangi clause. This aligns with strong feedback to the Finance and Expenditure Committee on its inquiry into the COVID-19 Public Health Response Act 2020.
- 64 The Bill has already been introduced to the House. It does not contain a Treaty clause for the following reasons:
- 64.1 Our approach with the Bill has been to keep the scope as narrow as possible given the tight timeframes. Therefore we have not attempted to address issues identified by the Finance and Expenditure Committee inquiry.
- 64.2 We do not consider it would be appropriate to introduce a Treaty clause into the COVID-19 Act without proper consultation and under urgency.
- 64.3 As noted by the Finance and Expenditure Committee, the Crown's Treaty obligations exist regardless of whether there is a Treaty clause being in legislation.
- 65 The New Zealand Law Society was unable to provide a submission in the time provided.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that on 22 July 2020 the Cabinet Social Wellbeing Committee (SWC) with Power to Act agreed to amend the COVID-19 Public Health Response Act 2020 to establish a legal basis for managed isolation and quarantine charges, and agreed that certain classes of people (eg diplomats) would be exempt from charges [CAB-20-MIN-0352.02];
- 2 **note** that on 28 July 2020 the Cabinet Legislation Committee (LEG) with Power to Act agreed to exempt temporary visa holders who left New Zealand before the border closure and had been ordinarily resident in New Zealand as of the border closure (unless they are entering New Zealand on a border exception as a critical worker), and agreed in principle to the level of the charges and the waiver process [LEG-20-MIN-0127];
- 3 **agree**, in addition to decisions previously made by SWC and LEG, to the settings for managed isolation and quarantine charges as contained in the draft regulations, in particular that:

- 3.1 Any New Zealander³ entering New Zealand after the regulations come into force should be liable for managed isolation and quarantine charges unless they left New Zealand before the regulations come into force and are returning for 90 days or more;
- 3.2 The following people should be exempt from charges:
 - 3.2.1 Any person entering New Zealand after a rescue at sea;
 - 3.2.2 Any person entering New Zealand after a medical air transfer;
 - 3.2.3 Any person entering managed isolation to care for a person who is exempt from charges;
 - 3.2.4 Any patients travelling as part of the Ministry of Health's High Cost Treatment Pool and the Ministry of Foreign Affairs and Trade's New Zealand Medical Treatment Scheme;
 - 3.2.5 New Zealand citizens, ordinarily resident in the Cook Islands, Niue or Tokelau, who are travelling to New Zealand for medical treatment;
 - 3.2.6 New Zealand citizens, ordinarily resident in the Cook Islands, Niue or Tokelau, travelling from a third country, through New Zealand (staying less than 90 days), in order to return to the Cook Islands, Niue or Tokelau (staying at least 90 days);
 - 3.2.7 People being deported to New Zealand, defined as "returning offenders" in the Returning Offenders (Management and Information) Act 2015 and any New Zealand citizen deported from Australia;
- 3.3 The child rate for MIQ charges should apply to children aged 3 to 17 years inclusive;
- 3.4 All adults in a room are jointly and severally liable to pay any charges that apply for themselves and their fellow residents;
- 3.5 If a child is staying in a room without an adult, the child's guardians are liable for the charges payable in respect of the child;
- 3.6 The cash asset threshold of \$8,000 for a single person or \$16,000 for a couple/sole parent for full waivers of MIQ charges be removed;
- 3.7 The chief executive of the Ministry of Business, Innovation and Employment may waive charges in whole or in part if they consider payment would cause undue financial hardship, and that in considering

³ This means New Zealand citizens (including those in the Cook Islands, Niue and Tokelau) and residence class visa holders. It also includes Australian citizens ordinarily resident in New Zealand and Australian permanent residents ordinarily resident in New Zealand.

this they may take into account a person's income, outgoings, assets and liabilities;

3.8 The chief executive of the Ministry of Business, Innovation and Employment may waive charges in whole or in part if they consider there are special circumstances which might justify a waiver, and these could include the following:

3.8.1 A New Zealander entering managed isolation because they left New Zealand to accompany a vulnerable or disabled person back to New Zealand;

3.8.2 Any person needing to travel to or from New Zealand to receive medical treatment;

3.8.3 Other compassionate grounds, including when a person has travelled to visit a seriously ill or dying close relative or attend a funeral or tangihanga (whether in New Zealand or overseas);

3.9 That the regulations will not apply to anyone who travelled to New Zealand on a plane that departed for New Zealand before 12.01 am (NZST) on the day the regulations come into force to travel directly to New Zealand, even if they enter MIQ on or after 12.01 am (NZST) on the day the regulations come into force;

4 **confirm** all other in-principle decisions made by LEG on 29 July 2020 [LEG-20-MIN-0127] not addressed in paragraph 3 above;

5 **note** that the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 will give effect to the decisions referred to in paragraphs 1 to 4 above;

6 **note** that these regulations can only be made by the Executive Council when the COVID-19 Public Health Response Amendment Bill commences on Royal assent;

7 **note** that the COVID-19 Public Health Response Amendment Bill is awaiting first reading, and is intended to be passed through all stages under urgency and receive Royal assent on or by 10 August 2020;

8 **authorise** the submission to the Executive Council of the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020, subject to the final form and commencement of the COVID-19 Public Health Response Amendment Bill;

9 **note** that a waiver of the 28-day rule is sought:

9.1 so that the regulations can come into force the day after they are approved;

- 9.2 on the grounds that the charges should come into force as soon as possible to minimise the impact on the sustainability of the system, and that people have been notified of the charges since 29 July 2020;
- 10 **agree** to waive the 28-day rule so that the regulations can come into force at 12.01 am (NZST) the day after they are made by Executive Council (which could be 11 August 2020 or at the first available Executive Council after the COVID-19 Public Health Response Amendment Bill receives Royal assent);
- 11 **note** that the COVID-19 Public Health Response Amendment Bill requires that the responsible Minister be satisfied of the following matters before recommending regulations:
- 11.1 the charges concerned relate to MIQ costs (including direct and indirect costs); and
- 11.2 the prescribed charges recover from any class of persons no more than an estimate of the actual and reasonable MIQ costs incurred in relation to that class (including both direct and indirect costs); and
- 11.3 there is appropriate provision to grant relief from the payment of the prescribed charges in circumstances where payment of the charges would cause undue financial hardship; and
- 11.4 the prescribed charges do not limit or are justified limits on the rights and freedoms in the New Zealand Bill of Rights Act 1990.
- 12 **note** the advice of the Minister of Housing that these requirements have been met;
- 13 **authorise** Parliamentary Counsel Office to make minor and technical changes to these regulations following confirmation by LEG and before confirmation by Cabinet on 10 August 2020, including to reflect decisions made by LEG today;
- 14 **authorise** the Minister of Housing to instruct Parliamentary Counsel Office to make changes to the regulations following confirmation by LEG and before confirmation by Cabinet on 10 August 2020 to reflect any changes made to the COVID-19 Public Health Response Amendment Bill during the legislative process.

Authorised for lodgement

Hon Dr Megan Woods

Minister for Housing



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

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

Portfolio **Housing**

On 4 August 2020, the Cabinet Legislation Committee:

- 1 **noted** that on 22 July 2020, the Cabinet Social Wellbeing Committee (SWC) with Power to Act agreed to amend the COVID-19 Public Health Response Act 2020 to establish a legal basis for managed isolation and quarantine (MIQ) charges, and agreed that certain classes of people (eg diplomats) would be exempt from charges [CAB-20-MIN-0352.02];
- 2 **noted** that on 28 July 2020 the Cabinet Legislation Committee (LEG) with Power to Act agreed to exempt temporary visa holders who left New Zealand before the border closure and had been ordinarily resident in New Zealand as of the border closure (unless they are entering New Zealand on a border exception as a critical worker), and agreed in principle to the level of the charges and the waiver process [LEG-20-MIN-0127];
- 3 **agreed**, in addition to decisions previously made by SWC and LEG above, to the settings for MIQ charges as contained in the draft regulations, in particular that:
 - 3.1 any New Zealander¹ entering New Zealand after the regulations come into force should be liable for MIQ charges unless they left New Zealand before the regulations come into force and are returning for 90 days or more;
 - 3.2 the following people should be exempt from charges:
 - 3.2.1 any person entering New Zealand after a rescue at sea;
 - 3.2.2 any person entering New Zealand after a medical air transfer;
 - 3.2.3 any person entering managed isolation to care for a person who is exempt from charges;
 - 3.2.4 any patients travelling as part of the Ministry of Health's High Cost Treatment Pool and the Ministry of Foreign Affairs and Trade's New Zealand Medical Treatment Scheme;

¹ This means New Zealand citizens (including those in the Cook Islands, Niue and Tokelau) and residence class visa holders. It also includes Australian citizens ordinarily resident in New Zealand and Australian permanent residents ordinarily resident in New Zealand.

- 3.2.5 New Zealand citizens, ordinarily resident in the Cook Islands, Niue or Tokelau, who are travelling to New Zealand for medical treatment;
- 3.2.6 New Zealand citizens, ordinarily resident in the Cook Islands, Niue or Tokelau, travelling from a third country, through New Zealand (staying less than 90 days), in order to return to the Cook Islands, Niue or Tokelau (staying at least 90 days);
- 3.2.7 people being deported to New Zealand, defined as “returning offenders” in the Returning Offenders (Management and Information) Act 2015 and any New Zealand citizen deported from Australia;
- 3.3 the child rate for MIQ charges should apply to children aged 3 to 17 years inclusive;
- 3.4 all adults in a room are jointly and severally liable to pay any charges that apply for themselves and their fellow residents;
- 3.5 if a child is staying in a room without an adult, the child’s guardians are liable for the charges payable in respect of the child;
- 3.6 the cash asset threshold of \$8,000 for a single person or \$16,000 for a couple/sole parent for full waivers of MIQ charges be removed;
- 3.7 the Chief Executive of the Ministry of Business, Innovation and Employment may waive charges in whole or in part if they consider payment would cause undue financial hardship, and that in considering this they may take into account a person’s income, outgoings, assets and liabilities;
- 3.8 the Chief Executive of the Ministry of Business, Innovation and Employment may waive charges in whole or in part if they consider there are special circumstances which might justify a waiver, and these could include the following:
 - 3.8.1 a New Zealander entering managed isolation because they left New Zealand to accompany a vulnerable or disabled person back to New Zealand;
 - 3.8.2 any person needing to travel to or from New Zealand to receive medical treatment;
 - 3.8.3 other compassionate grounds, including when a person has travelled to visit a seriously ill or dying close relative or attend a funeral or tangihanga (whether in New Zealand or overseas);
- 3.9 that the regulations will not apply to anyone who travelled to New Zealand on a plane that departed for New Zealand before 12.01 am (NZST) on the day the regulations come into force to travel directly to New Zealand, even if they enter MIQ on or after 12.01 am (NZST) on the day the regulations come into force;
- 4 **confirmed** all other in-principle decisions made by LEG on 29 July 2020 [LEG-20-MIN-0127] not addressed in paragraph 3 above;
- 5 **noted** that the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 will give effect to the decisions referred to in paragraphs 1 to 4 above;
- 6 **noted** that these regulations can only be made by the Executive Council when the COVID-19 Public Health Response Amendment Bill commences on Royal assent;

- 7 **noted** that the COVID-19 Public Health Response Amendment Bill is awaiting first reading, and is intended to be passed through all stages under urgency and receive Royal assent on or by 10 August 2020;
- 8 **authorised** the submission to the Executive Council of the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 [PCO 23108/6.0], **subject to** the final form and commencement of the COVID-19 Public Health Response Amendment Bill and any amendments to the regulations to reflect the decisions in this minute;
- 9 **noted** that a waiver of the 28-day rule is sought:
- 9.1 so that the regulations can come into force the day after they are approved;
- 9.2 on the grounds that the charges should come into force as soon as possible to minimise the impact on the sustainability of the system, and that people have been notified of the charges since 29 July 2020;
- 10 **agreed** to waive the 28-day rule so that the regulations can come into force at 12.01 am (NZST) the day after they are made by Executive Council (which could be 11 August 2020 or at the first available Executive Council after the COVID-19 Public Health Response Amendment Bill receives Royal assent);
- 11 **noted** that the COVID-19 Public Health Response Amendment Bill requires that the responsible Minister be satisfied of the following matters before recommending regulations:
- 11.1 the charges concerned relate to MIQ costs (including direct and indirect costs); and
- 11.2 the prescribed charges recover from any class of persons no more than an estimate of the actual and reasonable MIQ costs incurred in relation to that class (including both direct and indirect costs); and
- 11.3 there is appropriate provision to grant relief from the payment of the prescribed charges in circumstances where payment of the charges would cause undue financial hardship; and
- 11.4 the prescribed charges do not limit or are justified limits on the rights and freedoms in the New Zealand Bill of Rights Act 1990.
- 12 **noted** the advice of the Minister of Housing that these requirements have been met;
- 13 **authorised** the Parliamentary Counsel Office to make minor and technical changes to the regulations under LEG-20-SUB-0141 as required to give effect to the decisions above;
- 14 **authorised** the Minister of Housing to instruct the Parliamentary Counsel Office to make changes to the regulations under LEG-20-SUB-0141 to reflect any changes made to the COVID-19 Public Health Response Amendment Bill during the legislative process;
- 15 **noted** that in accordance with agreed coalition processes, the party leaders of Labour and New Zealand First have agreed that the New Zealand First Party will be free to differentiate publicly on the parameters of the MIQ fees system [LEG-20-MIN-0127];

Charlotte Doyle
Committee Secretary

Attendees: (see over)

Present:

Rt Hon Winston Peters
Hon Dr Megan Woods
Hon Chris Hipkins (Chair)
Hon Andrew Little
Hon David Parker
Hon Nanaia Mahuta
Hon Jenny Salesa
Hon Kris Faafoi
Hon Tracey Martin
Hon Eugenie Sage
Michael Wood MP (Senior Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG