

Office of the Minister of Housing  
Office of Minister of Immigration  
Office of the Minister of Health

Chair, Cabinet

## Co-payment Options for Managed Isolation and Quarantine

### Proposal


- 1 This paper reports back on co-payment options for managed isolation and quarantine. It seeks agreement to a new appropriation to support and deliver managed quarantine and managed isolation arrangements within New Zealand, and initial funding in 2020/21. The paper notes that additional Crown funding is likely to be required before the end of 2020.

### Relation to government priorities

- 2 This paper relates to the Government's response to COVID-19.

### Executive Summary

- 3 To protect New Zealand, almost everyone arriving at our borders is required to complete at least 14 days in managed isolation and quarantine (MIQ). As we move from an emergency to a sustainable response, the number of people arriving at the border is growing and the appropriated funding is forecast to be exhausted before the end of the year.
- 4 The Government is working to manage movement across the border, match people with places in MIQ and to make the system financially sustainable. This paper primarily addresses the financial sustainability of our MIQ system, as the Crown currently covers all costs of MIQ, and has approved funding of \$298 million until end 2020, based on an average of 288 daily arrivals over the next six months, but increasing demand means additional funding will be required.
- 5 Alongside the proposals in this paper, connected pieces of work are being undertaken and the first two will be considered at SWC on Wednesday:
  - 5.1 A booking system to better forecast and manage demand for MIQ facilities with requirements for almost all people have pre-booked a place in MIQ facilities before boarding a flight. This would be implemented through a new Civil Aviation Rule and COVID-19 Act section 11 Order; and
  - 5.2 s 9(2)(f)(iv)
  - 5.3 Providing a sustainable and scalable regulatory model for managed isolation and quarantine, to safely grow the supply of MIQ places.

- 6 In order for New Zealand to better accommodate arrivals and sustain services over time, while the threat of COVID-19 to our communities persists, without requiring the taxpayer to shoulder further significant overall fiscal costs, the Minister of Housing and Minister of Health were asked to report back on options for cost recovery for MIQ.
- 7 There are legal risks to requiring people to co-pay, especially citizens and residents, as the New Zealand Bill of Rights Act 1990 requires that we do not place an unjustifiable limitation on rights of freedom of movement, and especially on the right of New Zealand citizens to enter New Zealand. However we consider that careful design choices, including the ability to accommodate cases of hardship, or to offer free but lower-specified places, would mitigate these risks.
- 8 We propose that Cabinet agree in principle that a co-payment should be required from certain people arriving in New Zealand. This paper sets out how a co-payment scheme could work at a high level, including who should be asked to co-pay, for what, and the legislative changes we recommend would be necessary to introduce such a scheme in order to manage the legal risks. A decision is needed urgently on whether to proceed with developing a co-payment scheme, and if so, whether to progress urgent legislation to pass before the House rises on 6 August to enable the scheme.
- 9 Co-payment is a partial cost-recovery fee and reflects an arrangement where people arriving at the border and the Crown share the cost of MIQ. We consider that co-payment balances the private and public health benefits of MIQ and is a mechanism for offsetting the cost to the wider community from putting in place suitable facilities. We propose that co-payment would mean individuals (or a sponsor, such as employers or a Government agency) be required to cover accommodation and services (including food) but would not be asked to pay for agency costs such as health and welfare services, including testing, which would continue to be Crown funded.
- 10 There are a number of ways that costs could be set: people could be charged on the basis of actual costs, average contracted costs, or pay a minimum contribution. s 9(2)(d)  
  
Detailed design choices would need to be brought back to Cabinet for agreement following further work.
- 11 Cabinet is then asked to agree in principle to who should be required to co-pay, noting that this decision would have different implications for the timing of implementation. There are two major choices: the first would mean everyone (including New Zealand citizens and residents, and Australians normally resident in New Zealand) would be required to contribute. Some exceptions are proposed as well as the ability to exempt people on a case by case basis, and access to a form of hardship fund or loan facility. This is the recommended option. The alternative is to only charge foreign nationals on temporary visas.

- 12 The first, broadest, option of all people arriving (with exceptions) would reduce the costs currently falling on the wider community to the greatest extent, and is recommended. It would require law change to give the government clear legal authority to require people to pay a fee. The proposed flow management mechanism which will be brought to Cabinet shortly for approval could potentially be used to collect the co-payments at the point that air tickets are booked. There are two timing options, one which would see urgent legislation introduced and passed before the election (not recommended due to the legal risks identified), while the other (recommended) option would involve legislation being introduced in November and passed under urgency. That would also enable the outcomes of the current COVID legislation review and other work to improve the MIQ system to be taken into account.
- 13 The second option is to only charge foreign nationals on temporary visas (essentially the people who currently require an exception to be allowed to travel to New Zealand). This would not change the entry restrictions currently in place nor broaden the exceptions agreed by Cabinet for which visa holders are allowed to enter the country. It could potentially be implemented relatively quickly (probably in August, once contractual arrangements with accommodation providers had been put in place) through a change by the Minister of Immigration to Immigration Instructions. In that case individuals would likely have to pay hotels directly, and in the absence of legislation adds complexity. There is a risk that this could be found to amount to an indirect charge levied by the Crown, without a legal basis.
- 14 If Ministers wished to progress option 1 and charge the wider class of travellers, this will take time, and we could decide to in the interim introduce the immigration changes (option 2) and require temporary visa holders to co-pay more quickly and then have them brought into the wider legislated scheme when it is later implemented. However, the risks outlined above for this option would remain.
- 15 We also recommend that no public announcement be made signalling the intent to cost recover until decisions have been taken on the measures for flow management to match supply and demand, and the introduction of a booking system for MIQ places which will support this. Otherwise, we risk a spike in demand ahead of cost recovery coming into effect, and exacerbating the current supply issues, with passengers arriving in New Zealand and no places available in MIQ facilities for them.
- 16 Cabinet is also asked to note that it will be asked to agree to further Crown funding for MIQ before September, and to approve the creation of a new appropriation to support and deliver managed quarantine and managed isolation arrangements within New Zealand, with initial funding of \$20.001 million in 2020/21. Finally, Cabinet is asked to agree that the relevant Ministers and the Minister of Finance can together agree to fiscally neutral changes to appropriations relating to the funding approved for MIQ.

## Background

- 17 Managing the health risks of importing cases of COVID-19 at the border is a critical pillar of the Government's overall public health strategy for the COVID-19 pandemic. This includes the managed isolation and quarantine of arrivals into New Zealand in accordance with the COVID-19 Act. As we move from an emergency response into longer term management, Government is taking steps to ensure the sustainability and performance of our MIQ arrangements and to respond to capacity constraints and financial pressures.
- 18 The operational arrangements for quarantine and managed isolation were stood up under urgency as part of the all-of-government response to COVID-19. As we have now moved to Alert Level 1, a more sustainable approach, including new Ministerial and lead agency arrangements, is being rolled out. Additional funding of \$298 million over the next six months has been agreed, as the numbers of New Zealanders returning home has significantly outstripped initial projections. This funding is however now not sufficient to meet forecast demand.
- 19 On 16 June, Cabinet agreed inter alia to [CAB-20-MIN-0284]:
  - 19.1 appropriate a further \$298 million to Vote Health to fund costs related to the delivery of quarantine and managed isolation arrangement for arrivals to New Zealand, to 31 December
  - 19.2 recommend that the Prime Minister designate the Minister of Housing as the accountable Minister for quarantine and managed isolation provision, including for operational management of these services, and developing a sustainable, scalable and user pays model for isolation of arrivals to New Zealand, and
  - 19.3 that the Ministry of Business, Innovation and Employment will assume the role of lead agency for the provision of quarantine and managed isolation arrangements, with implementation to be transitioned from the National Crisis Management Centre (Operational Command Centre) and the Ministry of Health by 1 October 2020
  - 19.4 Cabinet invited the Minister of Housing and Minister of Health to report back to Cabinet in July 2020 on work streams established within the comprehensive Future Border Settings work programme, to support the transition to a sustainable model of quarantine and managed isolation:
    - 19.4.1 future operational quarantine and managed isolation system (Minister of Housing);
    - 19.4.2 regulatory model and co-payment regime (Minister of Housing and Minister of Health);
    - 19.4.3 assurance model for current and future arrangements (Minister of Housing and Minister of Health);
    - 19.4.4 operational transition arrangements (Minister of Housing and Minister of Health).

- 20 This paper responds to the invitation to report back on a co-payment regime. It addresses the financial sustainability of our managed isolation and quarantine system. The Minister of Housing will report back separately with a suite of changes to ensure a sustainable operational and regulatory model for the system, drawing on the findings of the current review.

**The demand on MIQ is growing and is not financially sustainable**

- 21 A growing number of people are arriving in New Zealand, but the numbers of people actually able to travel here are the lowest they have been since the 1960s. There are tens of thousands of people overseas who have been ordinarily resident here and who wish to return, who are the family members of citizens and residents, or who are people with skills that are critical to the economic recovery.
- 22 While New Zealand has achieved elimination of COVID-19, most countries have not with the World Health Organisation reporting sustained exponential growth in cases worldwide. To address the risk of COVID-19 being reintroduced, arrivals to New Zealand must undertake quarantine or managed isolation for 14 days after arrival (with very limited exemptions).
- 23 The vast majority of arrivals to date have been New Zealand citizens or residents (85 percent in the week to 21 June 2020). Citizens and residents (including those leaving and returning) are likely to continue to dominate inward flows into the medium term. Any future agreement of safe zones (trans-Tasman or Pacific) would reduce demand for isolation services from those places, but officials expect demand from overseas to continue to rise and replace those travellers requiring MIQ.
- 24 In addition to New Zealanders seeking to repatriate and visa holders, our strong existing international ties mean that there may be increasing situations where New Zealanders decide to travel temporarily and return to New Zealand (for example, to undertake work or for personal reasons). This will place additional pressure on demand for isolation facilities.
- 25 Demand for MIQ is exceeding supply and will continue to grow. Accommodating people choosing to travel to New Zealand while maintaining our critical border defences comes at significant cost to taxpayers. The current model of provision sees all costs for MIQ borne by the Crown, in line with international norms for quarantinable diseases. The additional \$298 million that Cabinet has agreed to appropriate to Vote Health allowed for a four per cent per fortnight increase in capacity, to 288 arrivals per day on average (or around 4000 at any time) between 1 July 2020 and 31 December 2020 [CAB-20-MIN-0284].
- 26 As foreseen, the additional funding will not however meet the growing demand for places. A limited number of temporary visa holders are already paying for alternative isolation arrangements that have been supported by government oversight and approved by the Ministry of Health, but these have been agreed on a case by case basis. These arrangements are not readily scalable without first implementing a robust regulatory framework and strategy. This will be included in the separate report back on future arrangements discussed above.

**Ministers are asked to agree that co-payment will be required from certain people arriving in New Zealand**

- 27 New Zealand has well-established principles of cost recovery for border-related services. A Border Clearance Levy is charged to almost all arriving and departing air and cruise vessel passengers (including New Zealand citizens) to cover the cost of Customs and Ministry of Primary Industry passenger clearance costs. Similarly, applicants for immigration services, such as visas, pay cost-recovery fees and levies which among other things pay for Immigration New Zealand's border clearance functions. These principles reflect that travellers drive the need and demand for border services.
- 28 We consider that maintaining full Crown funding is not a financially sustainable and fair model, in the context of the both anticipated demand for services and the potential need for these critical border defences for an extended period until the threat of COVID-19 to our community diminishes. Cost sharing between arrivals and the New Zealand community also fairly reflects the sacrifices (including financial) that people in New Zealand have already made to achieve COVID-19-free status.
- 29 s 9(2)(g)(i) [REDACTED] As a responsible Government and careful financial steward in the current economic environment, we must ensure that costs are fairly apportioned. We therefore do not recommend that the status quo continues.

*Ministers are asked to agree that co-payment contribute to the cost of accommodation and food only and that sponsors can agree to cover those costs*

- 30 Under our proposed approach, individuals (or sponsors, such as employers) would generally be required to cover accommodation and services (including food) but would not pay for agency costs such as health and welfare services, including testing, which would be Crown funded. There would be exemptions, including for hardship.
- 31 To indicate how the costs might be shared between individuals and the community, the following table outlines an illustrative breakdown of average costs for a single traveller and for a family of four. It is based on the current contractual and operational arrangements in place in Auckland, noting that actual average costs are changing as further contracts are entered into. Family costs are based on two rooms, children costing half the food rate of adults, and other facility costs similarly being lower for children than adults. The variable costs represent approximately 60 percent of the total costs for a single person, and just under 50 percent of the total for a family of four.

*Table one: Illustrative breakdown of estimated average costs per person / family of four – daily and over 14 days \* \*\**

Cost Category	Daily cost per person	Daily cost – family of four	14-day cost per person	14-day cost – family of four
Accommodation (occupied rooms)	165	330	2,310	4,620
Food	80	240	1,120	3,360
<b>Co-pay costs (possible)</b>	<b>245</b>	<b>570</b>	<b>3,430</b>	<b>7,980</b>
<i>Co-pay share</i>	60%	48%	60%	48%
Other facility costs (exclusive use overhead, additional security, laundry)	50	150	700	2,100
Wrap around supports (health and welfare)	50	200	700	2,800
Management and support teams	65	260	910	3,640
<b>Crown costs</b>	<b>165</b>	<b>610</b>	<b>2,310</b>	<b>8,540</b>
<b>Totals</b>	<b>410</b>	<b>1,180</b>	<b>5,740</b>	<b>16,520</b>

\* Approximate and rounded

\*\* GST status to be confirmed

- 32 While the above provides an indication of the costs that might be recovered through the co-payment scheme, the detail of how much will be charged, to who, and how, will need to be carefully considered to ensure that the scheme does not place an unjustifiable limitation on the right of New Zealand citizens to enter New Zealand under the New Zealand Bill of Rights Act 1990 (**BORA**).
- 33 The option of moving to a full user pays model (including eg health costs and security overheads) is also potentially available to us. This would mean that travellers meet the full costs of their accommodation and wrap-around health services. We also do not consider this to be fair or feasible. It would, in our view, place an unreasonable cost burden on some individuals and would not reflect the fact that MIQ provides public health benefits and the public benefits associated with allowing people to enter New Zealand. It is also likely that full cost recovery would place an unjustifiable limitation on the right of New Zealand citizens to enter New Zealand under BORA.

*Ministers are asked to agree that co-payment be required from a wide range of people including citizens and residents*

- 34 There are two major choices about who should be required to co-pay:
- 34.1 requiring everyone (including New Zealand citizens and residents, and Australians normally resident in New Zealand) who is require to undertake government provided managed isolation or quarantine to pay; or
- 34.2 requiring only foreign nationals (essentially the people who currently require an exception to be allowed to travel to New Zealand) to pay.
- 35 We recommend that Cabinet agree that most arrivals, including citizens, residents and Australians, be required to co-pay unless exempted, either

as a class (such new residents entering under the Refugee Quota) or as individuals, for example on hardship grounds. This would be fair: it reflects the benefit to individuals and families of being able to safely travel to be in New Zealand. It would also cushion the costs on the rest of the community, given that citizens and residents are likely to continue to be the largest proportion to travellers to New Zealand while COVID-19 restrictions remain in place.

*Legislative change is recommended to require co-payment from a wide range of people*

- 36 At present there is no clear legal authority to require co-payment by New Zealand citizens and residents. The BORA establishes that New Zealand citizens have a right to travel to and enter New Zealand. The Immigration Act 2009 provides certain statutory rights for resident class visa holders to travel to and enter New Zealand (except where the resident class visa was granted to a person outside New Zealand who has not yet travelled to New Zealand). It may be that the Government's obligation in respect of those rights could be met through basic MIQ accommodation being made available at no cost, while preserving the ability for citizens and residents to choose to pay for higher-specified housing (see from paragraph 54 below).
- 37 The COVID-19 Act specifically allows for orders requiring a class of people to be isolated or quarantined. Accordingly, orders under that Act are the most appropriate legal basis for the managed isolation and quarantine regime currently in force. It is on the basis of s 11 Orders under this Act that all air border arrivals are required to isolation or quarantine in a managed facility for at least 14 days (unless exempted). An equivalent order will be made to require some people arriving via maritime border to undergo MIQ.
- 38 However, there is currently no provision within the COVID-19 Act allowing for the recovery of costs from people isolated or quarantined pursuant to an order under that Act. There is provision in s 118(cc) of the Health Act 1956 allowing for regulations to be made providing for the requirement for people isolated under Part 4 of that Act to pay of the reasonable costs of their treatment and maintenance in isolation (and for exemption for that payment).

39 s 9(2)(h)

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*Stand-alone legislation is recommended and there are two timing options*

- 41 There are two timing options for creating a regulation making power as the basis for a MIQ co-payment scheme.
- 42 The first option is that Cabinet could agree to introduce a COVID-19 Response Amendment Bill and pass it under urgency before the House rises. This would amend the regulation-making power to enable co-payment. Providing for a regulation-making power to explicitly enable co-payment under the COVID-19 Act would provide a clear legal basis for recovering costs from broader classes of people. The amendment could allow for regulations to be established in September, with co-payment possible from October.
- 43 We note however that the Act itself was created under urgency. This approach has been heavily criticised, and has resulted in the current Finance and Expenditure committee inquiry into the COVID-19 Act. That inquiry is currently proceeding on the basis that no urgent amendments are needed to the COVID-19 Act, and so that the other issues on which they may wish to recommend amendments be made, should be considered through a normal legislative amendment process. If Cabinet decides to make an amendment urgently, the Financial and Expenditure Committee would need to be briefed urgently and the proposed amendment should be referred to them for a short period.
- 44 s 9(2)(g)(i)
- 45 The second, recommended, option is an amendment to the COVID-19 Act that is introduced and passed after the election. This legislation could include details of the co-payment scheme in the primary legislation and / or provide a regulation making power, but have the regulations already developed to implement. Such an option could be developed under better timeframes, drafted ready for introduction and urgent passing once the House returns following the Election, and ready for immediate operationalisation.

***We can potentially implement co-payment obligations on certain visa applicants without legislative change***

*Visas can be made subject to conditions and obligations can be placed on sponsors such as employers and education providers*

- 46 A co-payment scheme applying to new temporary entry class visa applicants and to new residents (approved offshore and entering for the first time) is possible without legislative change. This is effectively the people who currently require an exception to be allowed to travel to New Zealand. A scheme could be implemented by the Minister of Immigration changing Immigration Instructions along with the government's contractual arrangements with hotels.

- 47 The Crown does not currently have a legal basis to charge any person for the cost of MIQ. In the absence of legislative change, therefore, individuals would need to pay hotels directly. Implementation of this approach would be relatively complex and also gives rise to risks, including significant a legal risk that the Crown is found to be (indirectly) charging for MIQ without a legal basis to do so. While the proportion of these people entering New Zealand now is low (13 percent of arrivals last week), it is likely to rise over time as the expansion of border exceptions takes effect and those granted exceptions begin to travel to New Zealand over coming weeks and months.
- 48 There is a fiscal benefit from introducing this change now, and the price signal it sends. While the proportion of temporary visa holders entering New Zealand now is low (13 percent of arrivals last week), it is likely to rise over time as the expansion of border exceptions takes effect and those granted exceptions begin to travel to New Zealand over coming weeks and months.
- 49 Revised immigration instructions could be implemented relatively quickly. Some of the details are dependent upon whether a service to manage accommodation and match demand for rooms to supply has been established, and also on whether pre-payment mechanisms (such as a voucher system) exist.
- 50 The alternative would be to delay charging co-payment until the legislative change referred to above was made. This would also avoid the risk of legal challenge discussed above and at paragraph 61 below. Either way, we will need to extend out the end date and increase the scale of contingency funding available for MIQ provision.

**A co-payment scheme could allow for situations of hardship**

- 51 The costs to be borne by individuals and families present a significant financial outlay and we recognise that many arrivals will be financially stressed. In some cases, people will be returning to New Zealand due to experiencing job loss and consequential financial hardship overseas, but equally, there are many people who have the means to pay but are choosing to relocate or who seeking to exit New Zealand temporarily and return home for personal or business travel.
- 52 As part of the details to be developed, we propose that Cabinet agrees to build in payment options that provide for hardship. It will be important that the financial assistance model is readily accessible and flexible for people, to ensure that this risk is removed and that it does not impede ability of New Zealander to make use of government-assisted repatriation options. Further work will need to be completed on the detailed design, if Cabinet agrees to progress legislation, but this could be in the form of a hardship fund or draw on other models, such as the Recoverable Assistance Payment model that provides a one-off payment to help with essential or emergency costs, paid off over time.

**[Legal in confidence] A range of legal risks would need to be addressed**

- 53 There are a number of legal risks associated with establishing a co-payment regime. Firstly, there will obviously need to be a clear legal basis

for the Government to recover costs. This would most easily be addressed if a specific regulation- making power was added to the COVID-19 Act, the Health Act 1956, or a standalone Act.

54 Imposing a significant cost on returning New Zealand citizens, or otherwise preventing their return (for example through a pre-booking system) could be found to be an unlawful limitation on their right to enter New Zealand under s 18 of the BORA. We will need to ensure any regime can be justified under s 5 of BORA. These rights also extend to New Zealand citizens s 9(2)(h) (the Cook Islands, Niue, and Tokelau). There are also other possible human rights risks, including of a possible claim for discrimination, if the regime is to discriminate on the basis of citizenship or nationality. Any risk of legal challenge of course carries an associated risk of costs to Crown associated with proceedings, and likely higher consequential costs if a challenge was successful.

55 New Zealand also has particular responsibilities to s 9(2)(h) New Zealand (the Cook Islands, Niue, and Tokelau) that need to be considered when developing options for quarantine and managed isolation (in particular flowing from the fact that Cook Islanders, Niueans, and Tokelauans are New Zealand citizens who normally have free access to New Zealand). s 9(2)(g)(ii)

56 s 9(2)(g)(ii)

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58 There are number of international law issues that would also need to be factored into the design of the co-payment scheme. The International Health Regulations 2005 is an international treaty which sets out the measures states may take to respond to COVID-19. Article 40 of the IHRs on its face prohibits charging short term travellers for their isolation or quarantine.

59 However, there could be a credible legal argument that Article 40 does not prohibit charging for isolation facilities as a pre-advertised, consensual condition of entry to New Zealand, and as part of a deliberate policy to open up, rather than restrict, entry to New Zealand's border. While the argument is finely balanced, s 9(2)(h)

- 60 New Zealand has trade obligations related to the temporary entry of business persons in our trade agreements. Such persons have an expectation of entry into New Zealand, and paying for the cost of quarantine during a pandemic may give rise to questions. Given the unprecedented nature of the COVID-19 crisis, the temporary application of such measures, and the likelihood of other countries doing something similar, we consider the risk of challenge to be low. In addition, a reasonable argument could be made that co-payment in these circumstances is not inconsistent with our temporary entry obligations. Co-payment settings should be kept under review as our border settings evolve.
- 61 There are also legal risks associated with the proposal to require temporary visa holders to transact directly with hotels, in order to recover the cost of their managed isolation and quarantine, before legislation authorising cost recovery is in place. There is a risk that this could be found to amount to an indirect charge levied by the Crown, without a legal basis. It will be difficult to resist such a finding given that people will be required to be isolated in the hotel by the Crown, which is likely to amount to a detention.

### Implementation

- 62 Following Cabinet decisions, officials will undertake detailed work on implementation and prepare the required changes to entry requirements. This will ensure that the system aligns with other changes in the MIQ system as they are developed, such as the booking system allocating places and any proposals to use pre-paid vouchers or to use the booking system to collect funding.
- 63 The Minister of Immigration will certify Immigration Instructions to enable co-payment to be made mandatory for most offshore applicants for temporary visas and resident visas and the specified returning visa holders. This will require systems changes and the development of new application forms and communications material. At this stage we anticipate it could come into effect by August 2020 if decisions are made today.
- 64 Legislation to enable cost recovery from a wider range of travellers, including New Zealand citizens and residents, under any of the proposed options, could be passed and co-payment implemented at earliest by the beginning of 2021.

### Stakeholder Engagement

- 65 The urgency of the matters outlined in this paper have constrained the ability of officials to consult. s 9(2)(f)(iv)

### Financial Implications

- 66 The proposals in this paper are intended to lower fiscal costs to the Crown while enabling more people to safely travel to and enter New Zealand.

s 9(2)(g)(i)

- 67 The \$298 million in funding was agreed by Cabinet as contingency funding available through 31 December 2020. This was based on the lowest scenario in modelling at the time, of around 3,200 beds available at any time. However, demand has grown and there are no tools to manage flow. Numbers of beds in place have grown by over 40 percent already and is continuing to rise. s 9(2)(g)(i)

- 68 s 9(2)(g)(i)
- . Further work on modelling and updated costs is underway and the Ministers of Health and Housing will report back to Cabinet to request a tagged contingency for additional funding once this work has been completed.

- 69 In the interim, the Minister of Finance has approved the establishment of a new multi-category appropriation, Isolation and Quarantine Management, in Vote Building and Construction, to be administered by the Ministry of Business, Innovation and Employment and with the Minister of Housing as appropriation Minister, to support and deliver managed quarantine and managed isolation arrangements within New Zealand. Cabinet is asked to agree to increase expenditure to provide for costs associated with the new multi-category appropriation, by \$20.001 million in the 2020/21 year. This funding is critical and urgent to allow for authorised departmental spend. As all current arrangements are to 30 June 2020, unless this is approved, some MBIE MIQ operations would incur unauthorised expenditure from 1 July.

- 70 The MIQ funding is currently appropriated to Vote Health. Responsibility will shift at some point to the Minister of Housing. Cabinet is therefore asked to agree that the responsible Vote Ministers and the Minister of Finance can together agree to fiscally neutral changes to appropriations relating to this funding.

### Legislative Implications

- 71 As noted in the paper, urgent legislative amendment will be necessary in order to provide for a co-payment scheme for New Zealand citizens and residents to co-fund MIQ if Ministers agree to that option. Regulations would be required to give effect to, and set the details of, a co-payment scheme.
- 72 This paper therefore incorporates a potential bid for the inclusion of a Category 2 bill in the Government's 2020 Legislation Programme. If Cabinet agrees to this option, it is proposed that the Bill should be passed under urgency.

## Impact Analysis

- 73 The Treasury has determined that this proposal is a direct COVID-19 response and has suspended the RIA requirements in accordance with Cabinet decision (CAB-20-MIN-0138).

## Population Implications

- 74 The ongoing requirements for arrivals to New Zealand to under 14 days quarantine or managed isolation will primarily impact on New Zealanders' living aboard who wish to return home, and their families. There will be no discrepancy with how the policy is applied to populations within the general cohort of arriving New Zealanders.
- 75 The health impact of COVID-19 on priority groups such as the elderly, Māori, Pacifica, and ethnic communities is clear. We know that some groups are more at risk of severe illness from COVID-19 due to age or underlying health conditions.
- 76 A decision to maintain 14 days quarantine or managed isolation will ensure that the risk of transmission of COVID-19 to these communities is effectively managed and support the ability of our healthcare systems to meet the ongoing health and disability needs of priority communities, especially in Māori, Pacifica and rural communities.

## Human Rights

- 77 As noted earlier, some human rights issues could be engaged by the co-payment proposals. In particular, the New Zealand Bill of Rights Act 1990 establishes the freedom of movement of New Zealand citizens including the right to enter New Zealand and it will be important to ensure any regime can be justified under s 5 of BORA, and is kept under review.
- 78 There also other possible human rights risks, including of a claim for discrimination on the basis of citizenship or nationality. The Immigration Act 2009 recognises that immigration matters inherently involve different treatment on the basis of personal characteristics, but immigration policy development seeks to ensure that any changes are necessary and proportionate.
- 79 Current public health requirements for those entering New Zealand, including mandatory health screening and managed isolation or quarantine, amount to significant interferences with the rights of those entering to freedom from unreasonable searches and freedom of movement. If not properly justified, quarantine and managed isolation may also interfere with the right to freedom from arbitrary detention. Long term restrictive border measures, where they maintain an enduring separation of family members, may impact on the right to respect for the family, guaranteed under international law.
- 80 To date, border restrictions including mandatory health screening and managed isolation or quarantine measures have been demonstrably justified by the serious public health risks associated with importation of COVID-19 from abroad. However, as other countries manage the

prevalence of the disease with varying success, the continued justification of these measures for all arrivals will need to be kept under review as part of the broader inter-agency process led by the Solicitor-General to ensure that all COVID-19 related restrictive measures remain compliant with human rights obligations. To the extent that current border restrictions are relaxed on a country-by-country or region-by-region basis, it will be necessary to ensure that any discrimination based on nationality is demonstrably justified.

### **Consultation**

- 81 This paper was prepared by the Ministry of Business, Innovation and Employment. The following agencies were consulted and their views taken into account during its development: the Ministry of Health, the Ministry of Transport, the Ministry of Foreign Affairs and Trade, the Ministry of Primary Industries, New Zealand Customs Service, the Treasury, Ministry of Social Development, the Ministry of Education, Education New Zealand, the National Crisis Management Centre, Crown Law Office, and the Department of Prime Minister and Cabinet.

### **Communications**

- 82 A communications plan will be developed by officials in consultation with Ministers' offices to ensure widespread awareness of the co-payment requirement once it is in place.
- 83 Communications will need to be carefully timed alongside related initiatives. An indication of intent to introduce co-payment without the necessary management tools in place including a booking system and clarity on how the new copayment scheme will apply in practice to different groups, risks leading to a surge in arrivals, as well as causing undue distress and uncertainty to those with existing travel bookings or seeking to book travel to New Zealand on how the new arrangements apply to them.
- 84 New Zealanders and those with border entry exceptions will be or may have already booked flights and (once launched) spaces in the MIQ booking system prior to details of a co-payment scheme being announced. For those who have booked and subsequently are subject to co-payment for MIQ, there will likely be discontent.

### **Proactive Release**

- 85 This paper will be proactively released following Cabinet consideration, with redactions made as appropriate, including to address issues of commercial sensitivity, legally privileged advice, and foreign relations.

## Recommendations

- 86 The Ministers of Housing, Immigration and Health recommend that the Committee:

### *Background*

- 1 **Note** that, on 15 June 2020, Cabinet invited the Minister of Housing and the Minister of Health to report back to Cabinet in July 2020 on workstreams established to support the transition to a sustainable model of quarantine and managed isolation, including on a regulatory model and co-payment regime [CAB-20-MIN-0284];
- 2 **Note** that this paper reports back on options to implement a co-payment scheme;
- 3 **Note** that this paper is part of a suite of work being undertaken by officials across government to strengthen our managed isolation and quarantine arrangements, and sits alongside papers from the Ministers of Immigration, Housing and Transport with complementary proposals to require people arriving in New Zealand to have a booked place in managed isolation (or be exempt);

### *Co-payment scheme design options*

- 4 **Agree** to progress work on developing a co-payment scheme so that co-payment be required from certain people arriving in New Zealand;
- 5 **Agree** that co-payment means that individuals are required to contribute to accommodation and services (including food) but would not contribute to government agency costs (such as wrap-around health, welfare and security services);
- 6 **Agree** in principle to officials developing a co-payment scheme which requires that:

#### **EITHER** (recommended option)

- 6.1 everyone (including New Zealand citizens and residents, and Australians normally resident in New Zealand) who is required to undertake managed isolation or quarantine is subject to a co-payment requirement, unless exempted

#### **OR**

- 6.2 only foreign nationals who are applicants for temporary entry class visas (or their sponsors, such as employers) or for first time resident visas (broadly, the people who currently require an exception to be allowed to travel to New Zealand) and who are required to undertake managed isolation or quarantine are subject to a co-payment requirement, unless exempted;
- 7 **Note** that by introducing a co-payment scheme, this would not broaden the existing entry exceptions categories which have previously been agreed by Cabinet;
- 8 **Agree** in principle that certain returning visa holders, if they are eligible for an entry exception, can also be required to co-pay the costs of managed isolation



and quarantine, including full fee-paying students (or institutions, on their behalf) and work visa holders (or their employers, on their behalf)

- 9 **Agree** that the Minister of Housing and Minister of Immigration can exempt individuals from payment on a case by case basis;
- 10 **Note** that a requirement for foreign nationals to co-pay could potentially be implemented relatively quickly through Immigration Instructions (potentially from August, once contractual arrangements with accommodation providers had been put in place), and then brought into a wider legislated scheme;

*Legislative options if Ministers agree to require co-payment from a broad range of travellers*

- 11 **Note** that primary legislation would be required to establish the legal basis for a co-payment requirement for New Zealand citizens and residents, and Australians normally resident in New Zealand, and would also provide a more defensible basis for charging temporary visa holders;
- 12 **Agree** to progress a Bill to amend the COVID-19 Public Health Response Act 2020 (COVID-19 Act) to establish a legal basis for a co-payment regime, to be introduced and passed under urgency after the election, with any necessary regulations already developed for implementation following Assent;
- 13 **Note** that this proposal would provide a clear legal basis through establishing a full co-payment scheme in primary legislation, and would enable the outcomes of the current COVID legislation review and other work to improve the MIQ system to be taken into account;
- 14 **Note** that officials have identified another option, which would see urgent legislation passed under urgency before the election, but that this carries significant risk and is not recommended;
- 15 **Agree** that payment options that provide for hardship are built into the legislative design;
- 16 **Invite** the Minister of Housing to submit drafting instructions to the Parliamentary Counsel Office to draft a Bill to progress Cabinet's decisions;
- 17 **Authorise** the Minister of Housing to make decisions on any matters, consistent with the policy proposals in this paper, that may arise during the drafting process;
- 18 **Agree** that the Bill have Category 2 priority (must be passed in the year) in the legislative programme.

*Financial implications*

- 19 **Note** that current demand for MIQ is outstripping funding, and that a co-payment scheme is unlikely to happen quickly enough at scale to prevent the \$298 million contingency agreed by Cabinet on 15 June being exhausted by October 2020 [CAB-20-MIN-0284];
- 20 **Note** that further work modelling updated costs for the remainder of the 2020/21 year is underway, and will depend on decisions on whether to introduce a co-payment scheme for some or most people arriving in New Zealand;

- 21 **Invite** the Ministers of Housing and Health intend to report back to Cabinet to request a tagged contingency for additional funding once this work has been completed; and
- 22 **Agree** that responsible Vote Ministers and the Minister of Finance can together agree to fiscally neutral changes to appropriations relating to the funding approved for MIQ;
- 23 **Note** that the Minister of Finance has approved the establishment of a new multi-category appropriation, Isolation and Quarantine Management, in Vote Building and Construction, to be administered by the Ministry of Business, Innovation and Employment and with the Minister of Housing as appropriation Minister, to support and deliver managed quarantine and managed isolation arrangements within New Zealand;
- 24 **Note** that the Minister of Finance has agreed that the single overarching purpose of this appropriation is to support and deliver managed quarantine and managed isolation arrangements within New Zealand;
- 25 **Note** that the Minister of Finance and the Minister of Housing have agreed that the categories for this appropriation be as follows:

Title	Type	Scope
Operational Support	Departmental Output Expense	This category is limited to supporting quarantine and isolation arrangements that are being used in response to COVID-19.
Delivery of Services	Non-Departmental Output Expense	This category is limited to the delivery of quarantine and managed isolation arrangements within New Zealand.

- 26 **Agree** to increase expenditure to provide for costs associated with the new multi-category appropriation described in recommendations 23, 24 and 25 above, with the following impacts on the operating balance and net core Crown debt:

	\$m – increase /(decrease)				
	2019/20	2020/21	2021/22	2022/23	2023/24
Vote Building and Construction					
Minister of Housing					
Operating Balance Only Impact	-	20.001	-	-	-

- 27 **approve** the following changes to appropriations to give effect to the policy decision in recommendation 26 above, with a corresponding impact on the operating balance and net core Crown debt:

**IN C O N F I D E N C E**

	\$m – increase /(decrease)				
Vote Building and Construction	2019/20	2020/21	2021/22	2022/23	2023/24
Minister of Housing					
Multi-Category Expenses and Capital Expenditure:					
Isolation and Quarantine Management MCA	-	20.000	-	-	-
Departmental Output Expenses:					
Operational Support (funded by revenue Crown)					
Non-departmental Output Expenses:	-	0.001	-	-	-
Delivery of Services					
<b>Total Operating</b>	-	<b>20.001</b>	-	-	-

- 28 **agree** that the proposed changes to appropriations for 2020/21 above be included in the 2020/21 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply;
- 29 **agree** that the operating balance impact in recommendation 27 above of expenses incurred under recommendation 28 above be charged against the COVID-19 Response and Recovery Fund established as part of Budget 2020; and
- 30 **authorise** the Minister of Housing and the Minister of Finance to transfer any underspent funds in the Isolation and Quarantine Management Multi Category Appropriation in one year to the next financial year, with the final amount to be transferred confirmed as part of the October Baseline Update following the presentation of the Ministry of Business, Innovation and Employment's audited financial statements.

Authorised for lodgement

Hon Dr Megan Woods  
Minister of Housing



# Cabinet

## Minute of Decision

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*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.*

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### Co-payment Options for Managed Isolation and Quarantine

Portfolios

Housing / Immigration / Health

On 29 June 2020, the Cabinet:

#### Background

- 1 **noted** that on 15 June 2020, Cabinet invited the Minister of Housing and the Minister of Health to report-back to Cabinet in July 2020 on the workstreams established to support the transition to a sustainable model of quarantine and managed isolation, including on a regulatory model and co-payment regime [CAB-20-MIN-0284];
- 2 **noted** that the paper under CAB-20-SUB-0317 reports back on options to implement a co-payment scheme;
- 3 **noted** that the paper is part of a suite of work being undertaken by officials across government to strengthen New Zealand's managed isolation and quarantine (MIQ) arrangements, and sits alongside papers from the Ministers of Immigration, Housing, and Transport with complementary proposals to require people arriving in New Zealand to have a booked place in managed isolation (or be exempt);

#### Co-payment scheme design options

- 4 **noted** that the Minister of Housing will undertake further work on developing a co-payment scheme;

#### Financial implications

- 5 **noted** that current demand for MIQ is outstripping funding, and that a co-payment scheme is unlikely to happen quickly enough at scale to prevent the \$298 million contingency agreed by Cabinet on 15 June 2020 being exhausted by October 2020 [CAB-20-MIN-0284];
- 6 **noted** that further work modelling updated costs for the remainder of the 2020/21 year is underway, and will depend on decisions on whether to introduce a co-payment scheme;
- 7 **invited** the Ministers of Housing and Health to report-back to Cabinet to seek agreement to a tagged contingency for additional funding once the modelling work has been completed;
- 8 **agreed** that responsible Vote Ministers and the Minister of Finance can together agree to fiscally neutral changes to appropriations relating to the funding approved for MIQ;

- 9 **noted** that the Minister of Finance has approved the establishment of a new multi-category appropriation, Isolation and Quarantine Management, in Vote Building and Construction, to be administered by the Ministry of Business, Innovation and Employment and with the Minister of Housing as appropriation Minister, to support and deliver MIQ arrangements within New Zealand;
- 10 **noted** that the Minister of Finance has agreed that the single overarching purpose of the Isolation and Quarantine Management appropriation is to support and deliver managed quarantine and managed isolation arrangements within New Zealand;
- 11 **noted** that the Minister of Finance and the Minister of Housing have agreed that the categories for this appropriation be as follows:

Title	Type	Scope
Operational Support	Departmental Output Expense	This category is limited to supporting quarantine and isolation arrangements that are being used in response to COVID-19.
Delivery of Services	Non-Departmental Output Expense	This category is limited to the delivery of quarantine and managed isolation arrangements within New Zealand.

- 12 **agreed** to increase expenditure to provide for costs associated with the new multi-category appropriation, with the following impacts on the operating balance and net core Crown debt:

	\$m – increase /(decrease)				
	2019/20	2020/21	2021/22	2022/23	2023/24
Vote Building and Construction Minister of Housing					
Operating Balance Only Impact	-	20.001	-	-	-

- 13 **approved** the following changes to appropriations to give effect to the policy decision in paragraph 12 above, with a corresponding impact on the operating balance and net core Crown debt:

	\$m – increase /(decrease)				
Vote Building and Construction Minister of Housing	2019/20	2020/21	2021/22	2022/23	2023/24
Multi-Category Expenses and Capital Expenditure:					
Isolation and Quarantine Management MCA	-	20.000	-	-	-
Departmental Output Expenses:					
Operational Support (funded by revenue Crown)					
Non-departmental Output Expenses:					
Delivery of Services	-	0.001	-	-	-
<b>Total Operating</b>	-	<b>20.001</b>	-	-	-

- 14 **agreed** that the changes to appropriations for 2020/21 above be included in the 2020/21 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply;
- 15 **agreed** that the operating balance impact in paragraph 13 above of expenses incurred under paragraph 14 above be charged against the COVID-19 Response and Recovery Fund established as part of Budget 2020;
- 16 **authorised** the Minister of Housing and the Minister of Finance to transfer any underspent funds in the Isolation and Quarantine Management Multi Category Appropriation in one year to the next financial year, with the final amount to be transferred confirmed as part of the October Baseline Update following the presentation of the Ministry of Business, Innovation and Employment's audited financial statements.

Michael Webster  
Secretary of the Cabinet