

# **COVID-19 Public Health Response Amendment Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

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

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

The Bill provides a framework that—

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

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

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

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

### **Departmental disclosure statement**

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2020&no=316>

### **Regulatory impact statement**

No regulatory impact statement or supplementary analysis report was prepared alongside the policy relating to the contents of this Bill. Analysis for this policy will be included in a comprehensive analysis covering a suite of immigration and border measures relating to COVID-19 to be published at a later date.

### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause and provides that the Bill comes into force when it receives the Royal assent.

*Clause 3* provides that the Bill amends the COVID-19 Public Health Response Act 2020 (the **principal Act**).

## **Part 1**

### **Amendments to Part 1 of principal Act**

*Clause 4* amends section 4 of the principal Act, which is the purpose provision. This provision is amended so that the purpose of the principal Act expressly includes supporting a public health response to COVID-19 that takes account of relevant social and economic factors and that is economically sustainable.

*Clause 5* amends section 5 of the principal Act, which defines various terms used in the principal Act. This clause inserts definitions for new terms used, including MIQF, MIQF costs, and relevant Minister. This clause also replaces the term section 11 order with COVID-19 order, which is clearer.

## Part 2

### Amendments to Part 2 of principal Act

*Clause 6* amends section 9 of the principal Act, which sets out what the Minister of Health must do before making an order under section 11. The amendment expressly requires the Minister to be satisfied that the order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990.

*Clause 7* makes 3 amendments to section 11 of the principal Act. The first amendment is a technical amendment. The second amendment clarifies that an order made under section 11 can require a person to undergo a medical examination or testing. The third amendment is to expressly provide that an order made under section 11 may require a person to satisfy any specified criteria before entering New Zealand, for example, that the person be registered to enter a MIQF on arrival in New Zealand.

*Clause 8* inserts *new subpart 3A* into Part 2 of the principal Act (*new sections 32A to 32J*) providing a regulatory regime for cost recovery for which a different Minister may be responsible (the **relevant Minister**).

*New section 32A* states the purpose of these provisions.

*New section 32B* provides that charges relating to MIQF costs may be the subject of the cost recovery regulations, and these may include both direct and indirect costs.

*New section 32C* sets out the criteria for cost recovery.

*New section 32D* specifies the different methods of cost recovery.

*New section 32E* specifies the persons who are liable to pay the charges and provides for the regulations to further refine the scope of who may be liable.

*New section 32F* provides for exemptions, waivers, and refunds of the charges, and enables regulations to be made authorising the relevant Minister or the chief executive of the Ministry of Business, Innovation, and Employment to grant exemptions, waivers, and refunds.

*New section 32G* relates to payment of the charges.

*New section 32H* provides for the payment of prescribed charges to be deferred.

*New section 32I* provides that the charges, if not paid, are a debt to the Crown and court proceedings may be taken to recover the debt.

*New section 32J* ensures that nothing in *new subpart 3A* breaches section 65K of the Public Finance Act 1989.

*Clause 9* inserts *new section 33A* into the principal Act and sets out the regulation-making powers for the cost recovery regime.

*Clause 10* and the *Schedule* make consequential amendments to the principal Act to replace references to section 11 orders with references to COVID-19 orders.



*Hon Dr Megan Woods*

# **COVID-19 Public Health Response Amendment Bill**

Government Bill

## **Contents**

	Page
1 Title	2
2 Commencement	2
3 Principal Act	2
<b>Part 1</b>	
<b>Amendments to Part 1 of principal Act</b>	
4 Section 4 amended (Purpose)	2
5 Section 5 amended (Interpretation)	2
<b>Part 2</b>	
<b>Amendments to Part 2 of principal Act</b>	
6 Section 9 amended (Minister may make section 11 orders)	3
7 Section 11 amended (Orders that can be made under this Act)	3
8 New subpart 3A of Part 2 inserted	3
Subpart 3A—Cost recovery	
32A Purpose of subpart	3
32B MIQF costs subject to recovery	3
32C Criteria for cost recovery	4
32D Methods of cost recovery	4
32E Persons liable to pay prescribed charges	4
32F Exemptions, waivers, and refunds	5
32G Payment of charge	5
32H Payment of prescribed charges may be deferred	6
32I Prescribed charges to constitute debt due to Crown	6
32J Express authorisation for purposes of section 65K of Public Finance Act 1989	6
9 New section 33A inserted (Regulations relating to cost recovery)	6

	33A	Regulations relating to cost recovery	6
10		Further amendments	7
		<b>Schedule</b>	8
		<b>Further amendments to principal Act</b>	

**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the COVID-19 Public Health Response Amendment Act **2020**.

**2 Commencement**

This Act comes into force on Royal assent.

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**3 Principal Act**

This Act amends the COVID-19 Public Health Response Act 2020 (the **principal Act**).

**Part 1**

**Amendments to Part 1 of principal Act**

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**4 Section 4 amended (Purpose)**

After section 4(c), insert:

(ca) enables social, economic, and other factors to be taken into account where it is relevant to do so; and

(cb) is economically sustainable and allows for the recovery of MIQF costs; and

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**5 Section 5 amended (Interpretation)**

(1) In section 5(1), insert in their appropriate alphabetical order:

**COVID-19 order** means an order made under section 11 (as may be amended or extended from time to time under section 15)

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**managed isolation or quarantine facility** or **MIQF** means a facility that is designated by the New Zealand Government for use as a place of isolation or quarantine

**MBIE** means the Ministry of Business, Innovation, and Employment

**MIQF costs** means costs incurred by the New Zealand Government in respect of persons staying at MIQFs

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**prescribed charge** means a charge prescribed by regulations made under **section 33A**

**relevant Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of **subpart 3A** of Part 2

- (2) In section 5(1), repeal the definition of **section 11 order**.

## Part 2

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### Amendments to Part 2 of principal Act

#### 6 Section 9 amended (Minister may make section 11 orders)

After section 9(1)(b), insert:

- (ba) the Minister must be satisfied that the order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990; and

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

- (1) In section 11(1), replace “An order made by the Minister or the Director-General (as the case may be) under this section may be made” with “The Minister or Director-General may in accordance with section 9 or 10 (as the case may be) make an order under this section”.

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- (2) Replace section 11(1)(a)(viii) with:

(viii) report for and undergo a medical examination or testing of any kind, and at any place or time, specified and in any specified way or specified circumstances:

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- (3) After section 11(1)(a)(ix), insert:

(x) satisfy any specified criteria before entering New Zealand from a place outside New Zealand, which may include being registered to enter an MIQF on arrival in New Zealand:

#### 8 New subpart 3A of Part 2 inserted

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After section 32, insert:

### Subpart 3A—Cost recovery

#### 32A Purpose of subpart

The purpose of this subpart is to enable the New Zealand Government to recover MIQF costs.

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#### 32B MIQF costs subject to recovery

The relevant Minister may recommend the making of regulations under **section 33A** prescribing charges only if satisfied that the charges concerned relate to MIQF costs (including direct and indirect costs).

**32C Criteria for cost recovery**

The relevant Minister may recommend that regulations be made under **section 33A** only if the Minister is satisfied of the following matters:

- (a) 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 5
- (b) 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
- (c) the prescribed charges do not limit or are justified limits on the rights and freedoms in the New Zealand Bill of Rights Act 1990. 10

**32D Methods of cost recovery**

- (1) The methods by which MIQF costs may be recovered are as follows:
  - (a) fixed charges, or a method of calculating or ascertaining the charges:
  - (b) charges based on a scale or formula or at a rate determined on a unit basis: 15
  - (c) charges based on costs incurred from third parties:
  - (d) charges of estimated actual and reasonable costs to be spent on or in connection with the use of an MIQF.
- (2) Without limiting the way in which a charge may be set, a charge may be set at a level or in a way that— 20
  - (a) is determined by calculations that involve an averaging of costs:
  - (b) takes account of costs or potential costs that are not directly incurred in relation to the use of an MIQF by the person paying the charge, but which are costs or potential costs arising indirectly in relation to the use of an MIQF by 1 or more classes of persons. 25

**32E Persons liable to pay prescribed charges**

- (1) A person is liable to pay a prescribed charge, in accordance with regulations made under **section 33A**, if—
  - (a) the person has— 30
    - (i) arrived in New Zealand from a place outside New Zealand and is required by a COVID-19 order to stay at an MIQF; or
    - (ii) elected to stay at an MIQF for isolation or quarantine; and
  - (b) the person is a member of any prescribed class of persons; and
  - (c) the person is not an exempt person. 35
- (2) An **exempt person** is a person who—
  - (a) is, for the time being, accorded privileges and immunities under—

<ul style="list-style-type: none"> <li>(i) the Vienna Convention on Diplomatic Relations in accordance with the Diplomatic Privileges and Immunities Act 1968; or</li> <li>(ii) the Vienna Convention on Consular Relations in accordance with the Consular Privileges and Immunities Act 1971; or</li> </ul>	5
<ul style="list-style-type: none"> <li>(b) is officially recognised accompanying family of a person described in <b>paragraph (a)</b>; or</li> </ul>	5
<ul style="list-style-type: none"> <li>(c) is an official of a government entity travelling to New Zealand to conduct business with— <ul style="list-style-type: none"> <li>(i) New Zealand Ministers of the Crown; or</li> <li>(ii) a Ministry or department of the New Zealand Government; or</li> </ul> </li> </ul>	10
<ul style="list-style-type: none"> <li>(d) is a holder of a diplomatic or other official passport entering or transiting through New Zealand— <ul style="list-style-type: none"> <li>(i) en route to, or returning from, a diplomatic posting in a country other than New Zealand; or</li> <li>(ii) for the purpose of assisting with the operations of the embassy or consulate (in New Zealand or elsewhere) for which the person holds a passport and on which the person is travelling; or</li> </ul> </li> </ul>	15
<ul style="list-style-type: none"> <li>(e) is an official of a government entity entering or transiting through New Zealand en route to, or returning from, a third country— <ul style="list-style-type: none"> <li>(i) where the purpose of the visit to the third country was or is to conduct official government-to-government business; and</li> <li>(ii) the person is able to provide evidence to verify that purpose; or</li> </ul> </li> </ul>	20
<ul style="list-style-type: none"> <li>(f) is, or is a member of a class of persons that is, exempted by or under regulations made under <b>section 33A</b> from paying the prescribed charges.</li> </ul>	25
<b>32F Exemptions, waivers, and refunds</b>	
<ul style="list-style-type: none"> <li>(1) Regulations made under <b>section 33A</b> may provide for exemptions from, or waivers or refunds of, the whole or part of any prescribed charge, in any class or classes of cases.</li> </ul>	30
<ul style="list-style-type: none"> <li>(2) Regulations made under <b>section 33A</b> may authorise the relevant Minister or the chief executive of MBIE to exempt, waive, or refund the whole or part of any prescribed charge, or extend the time for payment, in any particular case or any class or classes of cases (and may prescribe criteria to be applied by the relevant Minister or chief executive in doing so).</li> </ul>	30
<b>32G Payment of charge</b>	
<ul style="list-style-type: none"> <li>(1) A prescribed charge is payable by a person— <ul style="list-style-type: none"> <li>(a) in the manner prescribed (for example by instalments); and</li> <li>(b) at the time prescribed.</li> </ul> </li> </ul>	35

(2)	Regulations made under <b>section 33A</b> may authorise the chief executive of MBIE to specify in relation to 1 or more classes of persons, or all persons, the manner and time of payment of any prescribed charge.	
(3)	All prescribed charges received by or on behalf of the New Zealand Government must be paid into a Crown Bank Account.	5
<b>32H Payment of prescribed charges may be deferred</b>		
	The chief executive of MBIE, on behalf of the Crown, may agree to defer the time for payment of a prescribed charge required by or under this subpart.	
<b>32I Prescribed charges to constitute debt due to Crown</b>		
	A prescribed charge or part of a charge that is not paid by the due date is recoverable in a court of competent jurisdiction as a debt to the Crown.	10
<b>32J Express authorisation for purposes of section 65K of Public Finance Act 1989</b>		
	To the extent that this subpart enables any lending as defined in the Public Finance Act 1989, this subpart is an express authorisation for the purposes of section 65K of that Act.	15
<b>9 New section 33A inserted (Regulations relating to cost recovery)</b>		
	After section 33, insert:	
<b>33A Regulations relating to cost recovery</b>		
(1)	The Governor-General may, by Order in Council made on the recommendation of the relevant Minister made after consultation with the Minister of Health,—	20
(a)	make regulations prescribing charges for MIQF costs in accordance with the provisions of <b>subpart 3A</b> :	
(b)	make regulations for the purposes of <b>section 32E</b> :	
(c)	make regulations for the purposes of <b>section 32F</b> :	25
(d)	make regulations for the purposes of <b>section 32G</b> :	
(e)	make regulations prescribing how the charges may be collected:	
(f)	make regulations providing for the payment of increased or additional charges in the event of late payment or non-payment:	
(g)	make regulations providing for any other matters necessary or desirable for the efficient recovery of MIQF costs.	30
(2)	The charges may be prescribed using any 1 or more of the methods specified in <b>section 32D</b> , or any combination of those methods.	
(3)	Different charges, or different rates or types of charges, may be prescribed in respect of—	35
(a)	different classes of persons:	

- (b) persons in different circumstances:
- (c) different types of MIQFs:
- (d) different locations of MIQFs.

#### **10 Further amendments**

In the provisions of the principal Act specified in the third column of the **Schedule**, replace in each place the phrase specified in the first column of that schedule (the **current phrase**) with the corresponding phrase set out in the second column of that schedule. 5

## Schedule

### Further amendments to principal Act

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<b>Current phrase</b>	<b>Replacement phrase</b>	<b>Provisions of principal Act</b>
section 11 orders	COVID-19 orders	Part 2, subpart 1 heading 8 heading 8(c) 9 heading 10 heading 12 heading 13 heading Part 2, subpart 2 heading 14 heading 14(5) 15 heading 17 heading
section 11 order	COVID-19 order	8 9(1) 10 12 13 14 15 16 heading 16(1) 17 20 21 22 24 26 Schedule 1