



COVERSHEET

Minister	Hon Chris Hipkins	Portfolio	COVID-19 Response
Title of Cabinet paper	COVID-19 Public Health Response (Validation of Managed Isolation and Quarantine Charges) Amendment Bill: Approval for Introduction	Date to be published	29 June 2021

List of documents that have been proactively released

Date	Title	Author
May 2021	COVID-19 Public Health Response (Validation of Managed Isolation and Quarantine Charges) Amendment Bill: Approval for Introduction	Office of the Minister for COVID-19 Response
19 April 2021	CAB-21-MIN-0140 Additional Item: Proposal to retrospectively validate by legislation how Australian Nationals have been charged for MIQ	Cabinet Office
13 May 2021	LEG-21-MIN-0057 COVID-19 Public Health Response (Validation of Managed Isolation and Quarantine Charges) Amendment Bill: Approval for Introduction	Cabinet Office

Information redacted

YES / NO (please select)

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reason of Free and frank opinions.

[In Confidence]

Office of the Minister for COVID-19 Response

Chair, Cabinet Legislation Committee

COVID-19 Public Health Response (Validation of Managed Isolation and Quarantine Charges) Amendment Bill: Approval for Introduction

Proposal

- 1 This paper seeks authorisation to introduce the COVID-19 Public Health Response (Validation of Managed Isolation and Quarantine Charges) Amendment Bill to Parliament on Budget Night.

Policy

- 2 On 19 April 2021, Cabinet agreed [CAB-21-MIN-0140] to:
 - 2.1 the introduction of legislation to retrospectively validate the collection of managed isolation and quarantine (MIQ) charges from Australian temporary entry class visa holders, including those who travelled to New Zealand on a border exception as either a critical health worker or other critical worker, prescribed and collected under the COVID-19 Public Health Response Act 2020. This amendment would be introduced and enacted on Budget Night.
 - 2.2 amend the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 (the Regulations) to clarify that MIQ charges should apply on the basis of the visa or border exception a person travels to New Zealand on, rather than the visa they are granted on entry (if that is different);
- 3 The proposed Bill gives effect to these decisions.
- 4 A technical issue may have resulted in some Australian temporary entry class visa holders (including critical workers and critical health workers) being charged an MIQ charge for which it could be argued there is no lawful authority to charge.
- 5 Cabinet's policy intent with regard to the collection of MIQ charges to Australians is clear. Australians who were ordinarily resident in New Zealand have the same liability as New Zealanders. All other Australians were therefore expected to be liable for charges under provisions in the Regulations related to temporary entry class visa holders, including critical workers and critical health workers.

- 6 However, reflecting New Zealand’s special relationship with Australia and the Trans-Tasman Travel Arrangement (raised earlier this year in relation to visa charges – see CAB-21-MIN-0046), all Australians are generally converted to a resident visa when they are granted entry to New Zealand. This is regardless of whether they entered on a temporary entry visa.
- 7 I consider that the way Australians have been charged to date reflects Cabinet’s policy intent. The proposed Bill will clarify this intention through a consequential change to the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020.
- 8 This technical issue will be resolved urgently on Budget Night. Free and frank opinions

Impact analysis

- 9 Treasury’s Regulatory Impact Analysis team has determined that the proposal to amend the MIQ fees legislation to account for the technical Australian fees issue is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities. It does not represent a change in policy intent and is solely intended to address a drafting error in the Regulations.

Compliance

- 10 The proposed Bill comply with the :
- 10.1 principles of the Treaty of Waitangi;
 - 10.2 rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
 - 10.3 disclosure statement requirements
 - 10.4 principles and guidelines set out in the Privacy Act 2020
 - 10.5 relevant international standards and obligations;
 - 10.6 Legislation Guidelines (2018 edition)
- 11 The proposed Bill, which retrospectively validates the collection of some charges, complies with the Legislation Guidelines. Section 12.1 of the Legislation Guidelines says that retrospective legislation can be appropriate if it is intended to “validate matters generally understood and intended to be lawful, but that are, in fact, unlawful as a result of a technical error.” The proposed Bill meets this circumstance as a technical error goes against Cabinet’s intention for Australians who are not ordinarily resident in New Zealand to be charged.

Binding on the Crown

- 12 The COVID-19 Public Health Response Act binds the Crown, so the proposed bill amending the Act will also bind the Crown.

Timing and commencement

- 13 The amendment will be introduced and come into force on 21 May as part of The Treasury's Budget Night Bill. The Bill will not go through select committee in accordance with the standard Budget Night process.

Certification by Parliamentary Counsel

- 14 The Parliamentary Counsel Office has certified the proposed Bill as being in order for submission to Cabinet.

Publicity

- 15 No communications planned are as the amendments are technical and clarify previously enacted policy.

Proactive Release

- 16 This paper will be proactively released following enactment of the legislation. Redactions will be made as appropriate, including to address issues of legally privileged advice, commercial sensitivity and foreign relations.

Consultation

- 17 The following agencies were consulted on the changes: Immigration New Zealand, MBIE (Immigration Policy), Crown Law Office, Ministry of Foreign Affairs and Trade (MFAT), and The Treasury.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that on 19 April 2021, Cabinet agreed [CAB-21-MIN-0140] to introduce legislation to retrospectively validate how Australian citizen and permanent residents have been charged for MIQ and amend the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 to ensure that they reflect Cabinet's policy intent;
- 2 **note** that the proposed Bill gives effect to these decisions;
- 3 **approve** the COVID-19 Public Health Response (Validation of Managed Isolation and Quarantine Charges) Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 4 **agree** that the Bill be introduced and enacted via the Budget Night Bill on 21 May 2021;

Authorised for lodgement

Hon Chris Hipkins
Minister for COVID-19 Response