



Cabinet Social Wellbeing Committee

Minute of Decision

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COVID-19 Public Health Response Act Amendment Bill: Policy Approvals

Portfolio COVID-19 Response

On 12 May 2021, the Cabinet Social Wellbeing Committee:

Improvements to support the public health response to COVID-19

- 1 **noted** that the policy objective of the COVID-19 Health Response Act Amendment Bill 2021 is to ensure that the COVID-19 Public Health Response Act 2020 (the Act) is future-proofed by giving greater flexibility and strength to the provisions empowering the COVID-19 response;

Extend the term of the Act

- 2 **agreed** to extend the term of the Act to May 2023 and allow for it to be repealed (in whole or in part) through an Order in Council;

Improved flexibility for the making of COVID-19 Orders

- 3 **agreed** to technical amendments in relation to the use of the word 'things' in sections 11 and 12 of the Act to remove the circular nature of the definition;
- 4 **agreed** to extend that definition of 'things' to encompass 'goods' and other terms to ensure a clearer scope for the application of COVID-19 Orders;
- 5 **agreed** to insert a deeming provision which ensures any goods prohibited under an Order are treated as "prohibited imports" for the purposes of the Customs and Excise Act 2018;
- 6 **noted** that including "goods" in the definition of "things" and cross-referencing the application of the Customs and Excise Act 2018 will provide greater certainty for Customs' in enforcing import prohibitions made under an Order;
- 7 **agreed** to amend section 11 of the Act 2020 (and possibly other sections) to ensure Orders can encompass a broader range of outcomes embracing the evolving nature of actions required to manage COVID-19 into the future;
- 8 **agreed** to allow the incorporation of material by reference in Orders so that the material always refers to the latest edition without amending the reference;

- 9 **agreed** that Orders can specify Alert Level boundaries based on the specific circumstances of each Alert Level change, and that Orders made pursuant to section 10 of the Act not be limited to a single territorial authority boundary;

Effective management of laboratory testing

- 10 **agreed** to include a provision to place requirements on testing laboratories including:
- 10.1 regulating quality control and minimum standards;
 - 10.2 requiring reporting of COVID-19 test results into the public health national testing repository;
 - 10.3 managing the supply of testing consumables;

Strengthening the infringement regime

- 11 **agreed** that the Act be amended to increase the court-imposed infringement fee to \$1,000 and the fine of up to \$3,000 for individuals;
- 12 **agreed** to amend the Act to introduce an infringement fee of \$3,000 and a fine of up to \$9,000 for body corporates;
- 13 **agreed** to amend the Act to provide authority for secondary legislation to set out an appropriate infringement fee framework;
- 14 **agreed** that the maximum criminal conviction fine in section 26 of the Act be revised to remain consistent with the increase in infringement offence fees/fines;

Improved delegated decision-making

- 15 **agreed** to provide more flexibility for the sub-delegation to the Director-General of Health or another person of the ability to:
- 15.1 specify or determine when, how, and for whom any provision of an order is excluded from applying; and
 - 15.2 designate, define, determine, or specify certain matters required for the operation of a provision of an order, including matters that affect or determine the application, operation, or scope of a provision;
- 16 **noted** that the above amendment would also address legal/technical issues recently identified by the Regulations Review Committee;

Supporting the effective operation of managed isolation and quarantine (MIQ)

- 17 **agreed** to amend the Act to provide a legislative basis for the orderly and effective operation of MIQ;
- 18 **noted** that public health is the primary purpose of MIQ;
- 19 **agreed** to recognise, as appropriate, broader considerations relevant to the effective operation of MIQ in addition to public health objectives, such as:
- 19.1 ensuring workers and people staying in facilities are kept healthy and safe in line with obligations under the Health and Safety at Work Act 2015;

- 19.2 the impact on rights under the New Zealand Bill of Rights Act 1990 of people staying in facilities and workers; and
- 19.3 operational and resourcing implications for MIQ;

Managing demand for places in MIQ

- 20 **agreed** to include a power in the Act for the Minister for COVID-19 Response to determine the apportionment of and basis for online MIQ allocations;
- 21 **agreed** that offline allocations can either be made by the Minister for COVID-19 Response or by the Chief Executive of the Ministry of Business, Innovation and Employment (MBIE) in accordance with criteria decided by the Minister for COVID-19 Response;
- 22 **noted** that the above powers are expected to mirror the recent changes to the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020;

Reversing fee liability

- 23 **agreed** to amend the Act so that the starting point for MIQ charges is that everyone who enters MIQ is liable, unless they are exempted under the Act or the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020;

Managing movement

- 24 **agreed** to recognise the ability to direct, impose conditions on, and restrict movement to, from and within managed isolation and quarantine facilities (MIQFs), including imposing room restrictions for:
- 24.1 people undertaking managed isolation or quarantine; and
- 24.2 other people onsite who enter MIQFs (e.g. people authorised to enter, people joining a person in a MIQF, or an unauthorised person attempting to enter);
- 25 **noted** that whether the above decisions are provided for in the Act itself, or the Act enables this to be done through Orders, will be confirmed during drafting;

Managing items

- 26 **agreed** to enable the Chief Executive of MBIE to make rules for the day-to-day operation of MIQFs, such as restricting, prohibiting and imposing conditions on what things can be brought into facilities, including deliveries and alcohol;

Dealing with complaints

- 27 **agreed** to require an internal complaints review process to be in place for MIQ decisions that impact on individuals;

Information collection for invoicing purposes

- 28 **agreed** to require people undertaking managed isolation or quarantine to provide MBIE with their on-wards contact details necessary to support MIQ invoicing;

Other amendments

- 29 **agreed** that the above decisions will be knitted into the existing offences regime in the Act (including creating new offences where necessary e.g. to provide enforcement for paragraph 28 above) in line with the changes proposed in paragraphs 11 to 14 above;

- 30 **agreed** to make consequential changes to the Act to support the changes in the above decisions and ensure the MIQ functions are recognised (for example, creating a new, part-specific purpose);

General, process, and timing

- 31 **agreed** that officials from the Department of the Prime Minister and Cabinet, the Ministries of Health and Justice and MBIE may continue consultation with selected stakeholders on drafting of the relevant amendments;
- 32 **invited** the Minister for COVID-19 Response to issue drafting instructions to Parliamentary Counsel Office to implement the above decisions;
- 33 **authorised** the Minister for COVID-19 Response to make any necessary policy decisions that may arise during the drafting process, consistent with the policy intentions agreed above.

Rachel Clarke
Committee Secretary

Present:

Rt Hon Jacinda Ardern
Hon Grant Robertson
Hon Kelvin Davis
Hon Carmel Sepuloni (Chair)
Hon Andrew Little
Hon Poto Williams
Hon Kris Faafoi
Hon Dr Ayesha Verrall
Hon Aupito William Sio
Hon Priyanca Radhakrishnan

Officials present from:

Office of the Prime Minister
Office of the SWC Chair
Officials Committee for SWC