



COVID-19 Public Health Response Amendment Bill (No 2)

29 September 2021

Presented to the House of Representatives under Standing Order 272.

J.17

Overview

This legislative statement supports the **first** reading of the COVID-19 Public Health Response Amendment Bill (No 2) (the Bill).

The Bill is an update to the *COVID-19 Public Health Response Act 2020* (the Act), which was introduced in May 2020. The Bill aims to enable the public health response to COVID-19 to continue to function in a coordinated and orderly way, informed by the experience of working with the Act since its commencement.

The Act established a legal framework to manage the outbreak of the COVID-19 pandemic, predominantly by enabling the Minister for COVID-19 Response (or the Director-General of Health in specific circumstances) to make COVID-19 Orders to enable the government's response to COVID-19. The existing orders enable a variety of policies and operational requirements, including:

- setting the restrictions that apply to different regions of New Zealand in the Alert Level Framework;
- establishing isolation and quarantine requirements for people entering New Zealand on the air and maritime borders;
- requiring vaccination and regular testing for workers at the border and in Managed Isolation and Quarantine (MIQ) facilities.

The Act was previously amended to allow for cost recovery of MIQ and update the Minister authorised to make COVID-19 Orders in August 2020 and December 2020 respectively.

The timeframe for the passing of the Bill reflects the importance of ensuring that the COVID-19 Response is kept up to date, while enabling the Select Committee to consider the powers within, along with any submissions. This is the first time that the Act or its delegated legislation has been considered by Select Committee.

The Bill **extends the term of the Act by one year** and makes three major groups of changes:

- changes to the enabling provisions for COVID-19 Orders;
- changes to the enforcement provisions of the Act; and
- new express provisions to support the effective and orderly operation of MIQ.

A number of the policies included in this Bill, particularly those related to MIQ, exist already operationally or through the COVID-19 Orders. However, to ensure their effectiveness and transparency, it is more suitable that they sit in primary legislation.

The Bill does not change the existing safeguards of the Act, such as (but not limited to) the requirements for the House to pass resolution to continue the Act on a periodic basis, or the requirement that all Orders be consistent with the *New Zealand Bill of Rights Act 1990* (NZBORA).

Empowering provisions for COVID-19 Orders

The Bill **refines the empowering provisions for COVID-19 Orders**, including by broadening their purpose to include management of COVID-19, rather than just prevention, allowing incorporation of material by reference and improving delegations.

The Bill empowers **the creation of new COVID-19 Orders** for the purpose of requisitioning testing consumables and requiring labs doing COVID-19 testing to do so for the national public health response. The compensation and disputes appeal process is consistent with that of similar powers in the *Health Act 1956*.

Enforcement provisions

The Bill authorises **new regulations to prescribe penalties for infringement offences based on classes of offences** up to a maximum set by the Act, rather than the Act prescribing the penalties directly. It also increases the maximum penalties for offences and introduces a distinction between individuals and bodies corporate.

The Bill also **extends the power to stop vehicles at roadblocks or checkpoints** established for enforcing or monitoring compliance with COVID-19 Orders that restrict movement. Currently limited to New Zealand Police constables, it will be extended include certain enforcement officers (limited to appropriately trained New Zealand Defence Force personnel, Māori Wardens, Pasifika Wardens, nominated representatives of iwi organisations and Community Patrollers) who must be acting under the supervision of a constable.

Express provisions to support the effective and orderly operation of MIQ

The Bill **shifts the provisions relating to offline and online MIQ allocations** from the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 to the Act, including the Minister's power to decide the apportionment of and basis for online MIQ allocations and the criteria for offline allocations. This reflects the potential rights-limiting impact of these powers. It also amends the decision-making responsibility for group allocations and introduces publication requirements relating to the group allocation process.

The Bill **reverses the default liability for MIQ charges**, so that people are liable unless exempt by regulations (rather than only liable if they are prescribed in regulations). While this will not directly impact fee liability, it will mean that the starting point will differ for future charges regulations. Any future regulations will still need to be consistent with NZBORA, including with regard to who is exempt (or not).

To support the invoicing of these charges, the Bill enables the agency operating MIQ **to collect onwards contact details** from people undertaking managed isolation or quarantine to support invoicing for charges and places a requirement on people to update those details. Failure to meet these requirements will constitute an infringement offence.

The Bill expressly recognises the ability of the relevant Chief Executive (CE) to **keep people in their rooms** in managed isolation or quarantine in certain circumstances, by not authorising activities such as access to fresh air. This can only be done where there is a public health, other health and safety or security risk, and must be consistent with NZBORA.

This brings transparency to something that can already be done under the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020.

The Bill enables the CE to **make rules for the day-to-day operation of MIQ** facilities, including delivery and alcohol policies. This includes the power to take or withhold items that are in breach of the rules or withhold those that are reasonably believed to be in breach of the rules, until the end of a person's stay in the MIQ facility. This is intended to cover items that create a hazard and jeopardise the effective and orderly functions of MIQ facilities and their purpose to prevent the risk of spread of COVID-19. The CE will also have a duty to return any item withheld at the end of the stay.

Finally, the Bill recognises the need for the agency operating MIQ to have a **complaints process** in place.