

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

## **(No 2)**

Government Bill

### **Explanatory note**

#### **General policy statement**

The COVID-19 Public Health Response Act 2020 (the **Act**), enacted in May 2020, established a bespoke legal framework to manage the unprecedented circumstances of the COVID-19 epidemic in a co-ordinated and orderly way. It was intended to apply both during and after any national state of emergency. The Act is an enabling framework that allows the Minister for COVID-19 Response (or the Director-General of Health in specified circumstances) to make COVID-19 orders to give effect to the public health response to COVID-19. Among other things, existing COVID-19 orders—

- set the restrictions that apply to different regions of New Zealand under the alert level system:
- establish isolation and quarantine requirements for people entering New Zealand via the air or maritime borders:
- require vaccination and regular testing of workers if they are to undertake certain work at borders or at managed isolation or quarantine (**MIQ**) facilities.

#### **Purpose**

This Bill aims to enable the public health response to COVID-19 to continue to function in a co-ordinated and orderly way, informed by the experience of working with the Act since its commencement. Specifically, it seeks to—

- better reflect our knowledge of how long the public health response may be necessary:
- address the reliance of MIQ on the general law and operational decisions:
- ensure that the empowering and enforcement provisions are fit-for-purpose to prevent and manage the risk of outbreak or spread of COVID-19.

## Policies included in Bill

The Bill—

- extends the term of the Act from May 2022 to May 2023:
- strengthens the infringement regime by increasing the maximum fines and fees, and enables new regulations to set a sliding scale of infringement offences:
- refines the powers of COVID-19 orders, including by broadening their purpose, incorporating material by reference, and improving delegations:
- empowers the creation of orders for the purpose of requisitioning testing consumables and requiring labs doing COVID-19 testing to do so for the national public health response, with appropriate compensation and a disputes appeal process:
- expressly recognises the ability of the chief executive of the agency responsible for MIQ, currently the Ministry of Business, Innovation, and Employment (**MBIE**), to impose room restrictions on people undertaking isolation or quarantine:
- shifts provisions regarding the allocation and prioritisation of spaces in MIQ from COVID-19 orders to primary legislation:
- recognises the complaints process of MIQ:
- enables the chief executive of the responsible agency to make rules for the day-to-day operation of MIQ facilities:
- reverses the default liability for MIQ charges, so that people are liable unless exempt (rather than only liable if members of a prescribed class):
- enables MIQ to collect contact details from people undertaking isolation or quarantine to support invoicing for MIQ charges.

The Bill does not change the existing safeguards of the Act, such as (but not limited to) the requirements for the House to pass resolutions to continue the Act on a periodic basis, the prerequisites for COVID-19 orders, or the requirement that all COVID-19 orders be consistent with the New Zealand Bill of Rights Act 1990.

## Departmental disclosure statement

The Ministry of Health and MBIE are 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=2021&no=68>

### Regulatory impact statements

The Ministry of Health and MBIE produced regulatory impact statements to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

Copies of these regulatory impact statements can be found at—

- <https://www.health.govt.nz/about-ministry/information-releases/regulatory-impact-statements>
- <https://www.mbie.govt.nz/document-library>
- <https://treasury.govt.nz/publications/informationreleases/ris>

### Clause by clause analysis

*Clause 1* relates to the Title.

*Clause 2* relates to commencement. Provisions relating to infringement offences and the amendments in *clause 18* will be brought into force by Order in Council. The rest of the provisions will come into force on the day after Royal assent.

## Part 1

### Amendments to principal Act

*Clause 3* provides that *Part 1* amends the COVID-19 Public Health Response Act 2020 (the **principal Act**).

*Clause 4* amends section 3 of the principal Act and relates to the repeal of the Act. This clause extends the life of the Act until 13 May 2023.

*Clause 5* amends section 5 of the principal Act, which defines certain terms used in the Act. This clause inserts definitions of chief executive, infringement fee, other place of isolation or quarantine, responsible agency, and room.

*Clause 6* amends section 10 of the principal Act, which enables the Director-General of Health to make COVID-19 orders. The amendments in this clause relax the current restriction in section 10 that provides that an order made by the Director-General can apply only within the boundaries of a single territorial authority district. The amendment will allow any of those COVID-19 orders to apply within any geographical or other practical boundaries.

*Clause 7* replaces section 11 of the principal Act, which is the primary empowering section for COVID-19 orders.

*New section 11(1)(a)* is substantially the same as the current section 11(1)(a). The new provision refers to containing, reducing, controlling, managing, eliminating, or limiting the risk of the outbreak or spread of COVID-19, as well its prevention.

*New section 11(1)(b)* is new and provides for the more effective management of managed isolation and quarantine facilities (**MIQFs**) and other places of isolation or quarantine.

*New section 11(1)(c)* replaces the current section 11(1)(b) (which refers to places, premises, craft, vehicles, and other things) to avoid confusion as to the meaning of other things. Places, premises, craft, and vehicles are referred to separately, rather than as other things.

*New section 11(1)(d)* is new and enables orders to make provisions relating to laboratories undertaking COVID-19 testing, including provisions that set standards or manage the supply of testing consumables.

*New section 11(1)(e)* is new and provides for the ability to requisition COVID-19 testing consumables and to require a testing laboratory to undertake testing solely for the public health response to COVID-19. Related provisions about compensation and payment for services are in *new section 11A* inserted by *clause 8*.

*New section 11(2)* replaces the current section 11(2) by enabling COVID-19 orders to specify that a breach of an order is a particular class of infringement offence (with the corresponding penalties). *See also clause 23*, for the related power to make regulations prescribing different infringement penalties for different infringement offences or classes of infringement offences.

*New section 11(3)* replaces the definition of things in the current section 11(3) so that things includes animals, goods, businesses, records, equipment, and supplies.

*New section 11(4)* provides that goods prohibited from entering a port or place by a COVID-19 order are prohibited imports for the purposes of the Customs and Excise Act 2018.

*New section 11(5)* provides that a COVID-19 order is secondary legislation, which means it will be published and disallowable in accordance with the Legislation Act 2019.

*New section 11(6)* provides that a notice given under the powers in *new section 12(1)(d)* will also be secondary legislation.

*Clause 8* inserts *new section 11A* into the principal Act.

*New section 11A* provides for compensation for testing laboratories whose consumables are requisitioned and for the payment for services where a laboratory is required by a COVID-19 order to undertake COVID-19 testing. This provision also enables the District Court to finally determine related questions and disputes. Similar provisions are contained in the Health Act 1956 (*see sections 69ZZE and 87*).

*Clause 9* replaces section 12 of the principal Act, which contains general provisions about the scope of COVID-19 orders.

*New section 12(1)(a)* replaces current section 12(1)(a) to align it with changes made by *clause 7*.

*New section 12(1)(b)* is substantially the same as current section 12(1)(b).

*New section 12(1)(c)* is substantially the same as current section 12(1)(c) and enables an order to disapply provisions of the order.

*New section 12(1)(d)* replaces current section 12(1)(d) and more clearly enables an order to subdelegate matters to the Director-General or the chief executive.

*New section 12(2)* carries over most of the limitations in current section 12(2). However, the limitation that prevents an order from applying to a specific individual is removed and the limitation about boundaries in orders made by the Director-General is aligned with changes made by *clause 6*.

*New section 12(3)* is substantially the same as current section 12(3).

*New section 12(4)* provides that the disapplication of a provision of a COVID-19 order can be expressed as an exemption or exclusion, or in another appropriate form.

*Clause 10* amends section 13 of the principal Act, which states the effect of COVID-19 orders. The amendment aligns section 13 with changes to the subdelegation aspects of COVID-19 orders addressed by *clause 9*.

*Clause 11* amends section 21 of the principal Act to enable an enforcement officer to direct a person to stop an activity that is contravening a rule made under *new section 32Q* inserted by *clause 22*.

*Clause 12* amends section 22 of the principal Act, which relates to the power to close roads and public places, and stop vehicles.

*Subclause (1)* replaces the word authority in section 22(2) with supervision, so that the provision refers to enforcement officers acting under the supervision of a constable when exercising the power to prohibit or restrict public access to a road or public place.

*Subclause (2)* inserts *new section 22(3A)* to ensure that a constable can exercise the power to stop vehicles at a road block or checkpoint for the purpose of enforcing or monitoring compliance with a COVID-19 order that restricts movement by people with or without vehicles.

*Subclause (3)* inserts *new section 22(5) to (7)* to enable a limited group of enforcement officers to stop a vehicle under section 22 if acting under the supervision of a constable. The group consists of members of the Armed Forces, Māori wardens, nominated representatives of iwi organisations, Pasifika wardens, and community patrolers.

*Clause 13* replaces section 26 of the principal Act and relates to offences. Section 26 creates an offence of intentionally failing to comply with a COVID-19 order and an infringement offence of doing anything specified as such in a COVID-19 order.

*New section 26(1)* carries over the offence of intentionally failing to comply with a COVID-19 order.

*New section 26(2)* increases the maximum fine for intentionally failing to comply with an order from \$4,000 to \$12,000 for an individual and to \$15,000 for a body corporate.

*New section 26(3)* provides that a breach of rules made by the chief executive under *new section 32Q* inserted by *clause 22* is an infringement offence. Other infringement offences are either created in the principal Act or in COVID-19 orders.

*New section 26(4)* sets out the penalties for infringement offences. A person who commits an infringement offence is currently liable to a fixed infringement fee of \$300 or a fine imposed by a court not exceeding \$1,000. This new provision fixes a maximum infringement fee of \$4,000 for an individual and \$12,000 for a body corporate, and increases the maximum fine for an infringement offence to \$12,000 for an individual and to \$15,000 for a body corporate. This provision also recognises that regulations made under *new section 33* inserted by *clause 23* may set different penalties (which may be less than the maximum penalties in *new section 26(4)*) for different infringement offences or classes of infringement offences. However, these new maximum penalties will not apply until *new section 26(4)* is brought into force by Order in Council.

*Clause 14* amends section 27 of the principal Act to increase the maximum fines for offences against that section (offences relating to the exercise of enforcement powers) so that they match the comparable new penalties in *new section 26* inserted by *clause 13*.

*Clause 15* amends section 28 of the principal Act to update the procedure for dealing with proceedings for infringement offences against or under the Act.

*Clauses 16, 17, 20, 21, and 24* consequentially amend the principal Act by removing references to MBIE or the relevant Minister, which are no longer needed.

*Clause 18* repeals section 32E(1)(a)(ii) of the principal Act, which states that persons are liable for MIQF charges if they belong to a prescribed class of persons. The intention is that everybody who is required or elects to isolate in an MIQF must pay the charges unless the regulations provide otherwise. If it is necessary to prescribe a class of persons for this purpose, this can be done in regulations made under section 33A of the Act. Section 32E(2) is replaced to reflect this policy so that all exemptions from the requirement to pay charges will be set out in regulations.

*Clause 19* amends section 32F of the principal Act, which relates to exemptions, waivers, and refunds of prescribed charges to recover MIQF costs (**MIQ charges**), to align that section with changes made by the Bill that affect the terms responsible Minister and chief executive.

*Clause 22* inserts *new subpart 3B (sections 32J to 32T)* into Part 2 of the principal Act and relates to the management of MIQFs and other places of isolation or quarantine. Some of the new provisions are similar to or substantially the same as provisions in the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 and, consequently, that order will have to be amended to align it with the changes made by this Bill.

#### *Provisions relating to management of allocations*

*New section 32J* defines certain terms used in *new subpart 3B*. This provision is based on clause 15H of the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020.

*New section 32K* makes the chief executive responsible for the operation of the managed isolation allocation system. This provision is substantially the same as clause 15I of the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 and will replace that clause.

*New section 32L* provides for the Minister to determine the apportionment between the issue of online allocations and offline allocations.

*New section 32M* provides for the issue of online allocations. This provision is substantially the same as clause 15K of the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 and will replace that clause.

*New section 32N* provides for the issue of offline allocations. This provision is similar to clause 15L of the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020, except that it provides for individual and group allocations, and will replace that clause.

*New section 32O* provides for the amendment and cancellation of allocations. This provision is substantially the same as clause 15M of the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 and will replace that clause.

#### *Provisions relating to MIQFs or other places of isolation or quarantine*

*New section 32P* restricts the movement of individuals who reside in an MIQF or other place of isolation or quarantine by requiring them to remain in their rooms except for a purpose set out in the section. Clause 8 of the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 currently requires a person to remain in their room, subject to exceptions set out in clauses 13 and 14 of the order. The exceptions set out in clause 13 of that order are set out in *new section 32P*, which will replace clause 13 of that order. This new section will enable the chief executive to manage the day-to-day movement of residents on public health and other grounds.

An intentional failure to comply with the obligation in the new section is an offence that carries the same penalties as those that apply to a comparable offence in *new section 26* in *clause 13*.

*New section 32Q* enables the chief executive to make rules for the purpose of ensuring the effective and orderly operation of MIQFs. The rules will be secondary legislation.

*New section 32R* enables the chief executive to seize and hold anything that a person in isolation or quarantine in an MIQF possesses in the MIQF, or attempts to bring into the MIQF, in breach of the rules made under *new section 32Q*. An example is bringing in alcohol in excess of limits specified in the rules. The power to hold any items lasts only for the remainder of the person's stay in the MIQF.

#### *Complaints process*

*New section 32S* requires the chief executive to establish a complaints process that provides for the agency to receive and investigate complaints from affected individuals about—

- the day-to-day operation of an MIQF:
- exemptions from any requirement to remain in an MIQF:
- MIQ charges:
- the managed isolation allocation system:
- managed isolation and quarantine.

### *Information collection*

*New section 32T* requires persons in managed isolation or quarantine to provide MBIE with contact information for the purpose of invoicing prescribed MIQ charges. This new section also provides for infringement offences relating to failure to comply with the section.

*Clause 23* replaces section 33 of the principal Act and contains the general regulation-making powers. The new section aligns the penalties for infringement offences with the new maximum penalties set out in *new section 26* in *clause 13* and enables the regulations to prescribe different levels of penalties for different infringement offences or classes of infringement offences.

*Clause 25* inserts *new sections 33B and 33C* into the principal Act. Those new sections enable COVID-19 orders and other secondary legislation made under the Act to incorporate material by reference. Similar provisions are in sections 168 and 168A of the Animal Products Act 1999.

*Clause 26* amends Schedule 1 of the principal Act to insert transitional provisions relating to the penalties for infringement offences. Because *new section 26(4)* in *clause 13* enables new penalty levels being prescribed by regulations for infringement offences, the existing penalties in section 26 need to continue to apply until the regulations come into force.

## **Part 2**

### **Consequential amendments to other Acts**

#### *Amendment to Summary Proceedings Act 1957*

*Clause 27* provides that *clause 28* amends the Summary Proceedings Act 1957.

*Clause 28* updates the definition of infringement notice in section 2(1) of the Summary Proceedings Act 1957 by including infringement notices for offences against the COVID-19 Public Health Response Act 2020 in the list of infringement notices in that definition. Section 28 of the COVID-19 Public Health Response Act 2020 currently applies the procedure in section 21 of the Summary Proceedings Act 1957 to COVID-19 infringement offences.

#### *Amendment to Secondary Legislation Act 2021*

*Clause 29* provides that *clause 30* amends the Secondary Legislation Act 2021.



*Clause 30* repeals provisions to be inserted into the COVID-19 Public Health Response Act 2020 by the Secondary Legislation Act 2021 (not yet in force) that are replaced by *new section 11* in *clause 7*.



*Hon Chris Hipkins*

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

Government Bill

## **Contents**

		Page
1	Title	3
2	Commencement	3
<b>Part 1</b>		
<b>Amendments to principal Act</b>		
3	Principal Act	3
4	Section 3 amended (Repeal of this Act)	3
5	Section 5 amended (Interpretation)	4
6	Section 10 amended (Director-General may make COVID-19 orders)	4
7	Section 11 replaced (Orders that can be made under this Act)	4
	11 Orders that can be made under this Act	4
8	New section 11A inserted (Compensation or payment relating to requisitions)	7
	11A Compensation or payment relating to requisitions	7
9	Section 12 replaced (General provisions relating to COVID-19 orders)	7
	12 General provisions relating to COVID-19 orders	7
10	Section 13 amended (Effect of COVID-19 orders)	9
11	Section 21 amended (Power to give directions)	9
12	Section 22 amended (Power to close roads and public places and stop vehicles)	9
13	Section 26 replaced (Offences relating to compliance with orders)	9
	26 Offences and infringement offences	10

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

14	Section 27 amended (Offences relating to exercise of enforcement powers)	10
15	Section 28 amended (Proceedings for infringement offences)	10
16	Section 32B amended (MIQF costs subject to recovery)	11
17	Section 32C amended (Criteria for cost recovery)	11
18	Section 32E amended (Persons in respect of whom prescribed charges payable)	11
19	Section 32F amended (Exemptions, waivers, and refunds)	11
20	Section 32G amended (Payment of charge)	11
21	Section 32H amended (Express authorisation for purpose of section 65K of Public Finance Act 1989)	11
22	New subpart 3B of Part 2 inserted	11
	Subpart 3B—Management of MIQFs and other places of isolation or quarantine	
	<i>Management of allocations</i>	
32J	Interpretation	12
32K	Chief executive responsible for operation of managed isolation allocation system	12
32L	Apportionment between allocations	12
32M	Online allocations	12
32N	Offline allocations for individuals and groups	13
32O	Amendment and cancellation of allocations	13
	<i>Provisions relating to MIQFs or other places of isolation or quarantine</i>	
32P	Restrictions on movement within MIQFs or other places of isolation or quarantine	13
32Q	Chief executive may make rules	15
32R	Power to seize and hold things	15
	<i>Complaints process</i>	
32S	Complaints process relating to management of MIQFs	15
	<i>Information collection</i>	
32T	Persons in respect of whom charges are payable to provide contact details	16
23	Section 33 replaced (Regulations)	16
	33 Regulations	16
24	Section 33A amended (Regulations relating to cost recovery)	17
25	New sections 33B and 33C inserted	17
	33B Incorporation of material by reference in COVID-19 orders	17
	33C Availability and proof of material incorporated by reference	18
26	Schedule 1 amended	19

**Part 2**

**Consequential amendments to other Acts**

*Amendment to Summary Proceedings Act 1957*

27	Principal Act	19
28	Section 2 amended (Interpretation)	19

*Amendment to Secondary Legislation Act 2021*

29	Principal Act	19
30	Schedule 14 amended	19

**Schedule**

20

**New Part 2 inserted into Schedule 1**

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

**1 Title**

This Act is the COVID-19 Public Health Response Amendment Act **(No 2) 2021**.

**2 Commencement**

5

(1) The following provisions come into force on a date appointed by the Governor-General by Order in Council:

(a) **section 5(3):**

(b) **section 7** (to the extent that it relates to new **section 11(2)** of the COVID-19 Public Health Response Act 2020): 10

(c) **section 13** (to the extent that it relates to new **section 26(4)** of that Act):

(d) **section 18:**

(e) **section 22** (to the extent that it relates to new **section 32Q(1)(c)** of that Act). 15

(2) The rest of this Act comes into force on the day after Royal assent.

**Part 1**

**Amendments to principal Act**

**3 Principal Act**

This Part amends the COVID-19 Public Health Response Act 2020. 20

**4 Section 3 amended (Repeal of this Act)**

Replace section 3(3) with:

(3) If not repealed sooner under subsection (1), this Act is repealed on the close of 13 May 2023.

**5 Section 5 amended (Interpretation)**

(1) In section 5(1), repeal the definition of **MBIE**.

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

**chief executive** means the chief executive of the responsible agency

**other place of isolation or quarantine** means a place of isolation or quarantine designated by a COVID-19 order 5

**responsible agency** means the department of the public service or agency or entity that, with the authority of the Prime Minister, is responsible for the administration of MIQFs

**room**, in relation to an MIQF or other place of isolation or quarantine, means the area allocated to a person for the purpose of undertaking isolation or quarantine, including 1 or more rooms and any outdoor space such as a garden or balcony 10

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

**infringement fee**, in relation to an infringement offence, means the infringement fee for the offence specified in **section 26(4)(a)** or prescribed by regulations 15

(4) In section 5(1), repeal the definition of **relevant Minister**.

**6 Section 10 amended (Director-General may make COVID-19 orders)**

Replace section 10(a) with: 20

(a) the order may apply only within boundaries described in the order that—

(i) are relevant to the circumstances addressed by the order; and

(ii) are described in a practical way, whether by reference to roads, geographical features (such as rivers or ranges), or in any other way that enables the boundaries to be readily ascertained: 25

**7 Section 11 replaced (Orders that can be made under this Act)**

Replace section 11 with:

**11 Orders that can be made under this Act**

(1) The Minister or the Director-General may, in accordance with section 9 or 10 (as the case may be), make an order under this section for 1 or more of the following purposes: 30

(a) to require persons to refrain from taking any specified actions that contribute or are likely to contribute to the risk of the outbreak or spread of COVID-19, or require persons to take any specified actions, or comply with any specified measures, that contribute or are likely to contribute to preventing, containing, reducing, controlling, managing, eliminating, or limiting the risk of the outbreak or spread of COVID-19, including (without limitation) requiring persons to do any of the following: 35

- (i) stay in any specified place or refrain from going to any specified place:
- (ii) refrain from associating with specified persons:
- (iii) stay physically distant from any persons in any specified way:
- (iv) refrain from travelling to or from any specified area: 5
- (v) refrain from carrying out specified activities (for example, business activities involving close personal contact) or carry out specified activities only in any specified way or in compliance with specified measures:
- (vi) be isolated or quarantined in any specified place or in any specified way: 10
- (vii) refrain from participating in gatherings of any specified kind, in any specified place, or in specified circumstances:
- (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: 15
- (ix) provide, in specified circumstances or in any specified way, any information necessary for the purpose of contact tracing:
- (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: 20
- (b) in relation to an MIQF or other place of isolation or quarantine, to require specified actions to be taken, or require compliance with any specified measures, for the purpose of managing the movement of people to, from, and within the MIQF or other place of isolation and quarantine, including (without limitation) any of the following: 25
  - (i) giving directions that relate to the movement of people to, from, and within the MIQF or other place of isolation or quarantine:
  - (ii) imposing restrictions and conditions that relate to the movement of people to, from, and within the MIQF or other place of isolation or quarantine: 30
  - (iii) permitting people to leave their rooms in the MIQF or other place of isolation or quarantine in accordance with any requirements or conditions specified in the order:
- (c) in relation to any places, premises, craft, vehicles, or other things, to require specified actions to be taken, require compliance with any specified measures, or impose specified prohibitions that contribute or are likely to contribute to preventing, containing, reducing, controlling, managing, eliminating, or limiting the risk of the outbreak or spread of COVID-19, including (without limitation) any of the following: 35 40

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

Part 1 cl 7

- (i) requiring any places, premises, craft, vehicles, or other things to be closed or only open if specified measures are complied with:
- (ii) prohibiting any craft, vehicles, or other things from entering any port or place, or permitting the entry of any craft, vehicles, or other things into any port or place only if specified measures are complied with: 5
- (iii) prohibiting gatherings of any specified kind in any specified places or premises, or in any specified circumstances:
- (iv) requiring any places, premises, craft, vehicles, or other things to be isolated, quarantined, or disinfected in any specified way or specified circumstances: 10
- (v) requiring the testing of any places, premises, craft, vehicles, or other things in any specified way or specified circumstances:
- (d) in relation to laboratories that undertake COVID-19 testing, by—
  - (i) setting quality control measures and minimum standards: 15
  - (ii) requiring COVID-19 test results to be reported to the Director-General's public health national testing repository:
  - (iii) managing the supply of testing consumables (such as reagents and swabs) used by the laboratories:
  - (iv) providing differently for different classes of testing laboratories (for example, different provisions for laboratories depending on whether they are funded publicly or privately): 20
- (e) requiring the owner or any person in charge of a specified laboratory that undertakes COVID-19 testing to—
  - (i) deliver or use, in accordance with directions given under the order, specified quantities of COVID-19 testing consumables that the Minister considers necessary for the purposes of the public health response to COVID-19: 25
  - (ii) undertake COVID-19 testing solely for the purposes of the public health response to COVID-19 while subject to the order, whether or not the laboratory is contracted by the Crown for that purpose. 30
- (2) An order made by the Minister may specify which breaches of an order made by the Minister or the Director-General are infringement offences for the purposes of **section 26(3)**, and may specify that a breach of an order is a particular class of infringement offence (with the corresponding penalties) for the purposes of regulations made under **section 33(1)(b)**. 35
- (3) For the purposes of this section and **section 12**, **things** includes animals, goods, businesses, records, equipment, and supplies.
- (4) All goods prohibited from import under a COVID-19 order are deemed to be included among goods prohibited from import under section 96 of the Customs 40



	and Excise Act 2018, and the provisions of that Act apply to those goods accordingly.	
(5)	A COVID-19 order is secondary legislation ( <i>see</i> Part 3 of the Legislation Act 2019 for publication requirements).	
(6)	If a COVID-19 order authorises the Director-General or chief executive to do anything specified in <b>section 12(1)(d)</b> by notice,—	5
	(a) the notice is secondary legislation, unless it applies only to 1 or more named persons or things; and	
	(b) the order must contain a statement to that effect.	
<b>8</b>	<b>New section 11A inserted (Compensation or payment relating to requisitions)</b>	10
	After section 11, insert:	
<b>11A</b>	<b>Compensation or payment relating to requisitions</b>	
(1)	This section applies if an order is made under <b>section 11(1)(e)</b> .	
(2)	The owner of a testing laboratory injuriously affected by the requisitioning of testing consumables is entitled to receive compensation from the Crown at the market rate for the consumables requisitioned.	15
(3)	The owner of a testing laboratory required to undertake COVID-19 testing solely for the purposes of the public health response to COVID-19 is entitled to be paid by the Crown for its services at the market rate for those services.	20
(4)	All questions and disputes relating to claims for compensation or payment under this section must be heard and determined by the District Court, whose decision is final.	
<b>9</b>	<b>Section 12 replaced (General provisions relating to COVID-19 orders)</b>	
	Replace section 12 with:	25
<b>12</b>	<b>General provisions relating to COVID-19 orders</b>	
(1)	A COVID-19 order may—	
	(a) impose different measures, including requirements, restrictions, directions, and conditions, for different circumstances and different classes of persons, places, premises, craft, vehicles, or other things:	30
	(b) apply,—	
	(i) in relation to persons, generally to all persons in New Zealand or to any person or specified class of persons in New Zealand:	
	(ii) in relation to places, premises, craft, vehicles, or other things, to any class or to all of them:	35
	(iii) in relation to anything else,—	
	(A) generally throughout New Zealand:	

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

Part 1 cl 9

- (B) in any area, however described:
- (c) provide that any provision of a COVID-19 order (even if the provision is beneficial) does not apply in any specified circumstances, in any specified way, or to any specified persons, places, premises, craft, vehicles, or other things, or to any specified class of persons, places, premises, craft, vehicles, or other things: 5
  - (d) authorise the Director-General or the chief executive, subject to any criteria or conditions specified in the order, to do any of the following things by written notice:
    - (i) specify, determine, designate, define, or approve any matters, impose conditions, or give directions, required for the operation of a provision of a COVID-19 order, including matters that affect or determine the application, operation, or scope of a provision: 10
    - (ii) determine that any provision of a COVID-19 order (even if the provision is beneficial) does not apply in any specified circumstances, in any specified way, or to any specified persons, places, premises, craft, vehicles, or other things, or to any specified class of persons, places, premises, craft, vehicles, or other things: 15
  - (e) if any thing can be prohibited under **section 11**, permit that thing but only subject to specified conditions. 20
- (2) However, a COVID-19 order,—
- (a) if made by the Director-General, may apply only within the boundaries described under **section 10(a)**:
  - (b) may not be made under **section 11(1)(c)(i)** in relation to—
    - (i) any premises that are, or any part of any premises that is, used solely as a private dwellinghouse: 25
    - (ii) any premises that are, or are part of, a prison (within the meaning of section 3(1) of the Corrections Act 2004):
  - (c) may not be made under **section 11(1)(c)(i) or (iii)** in relation to—
    - (i) any premises within the parliamentary precincts (within the meaning of section 3 of the Parliamentary Service Act 2000): 30
    - (ii) any premises whose principal or only use is as a courtroom or Judge’s chambers or a court registry.
- (3) If a COVID-19 order or a notice referred to in **subsection (1)(d)** disapplies a provision or requirement of an order, subject to compliance with a stated condition, a person who breaches the condition must be treated as breaching that provision or requirement. 35
- (4) For the purposes of **subsection (1)(c) and (d)**, it does not matter how the disapplication of a provision of a COVID-19 order is expressed (for example, it

may be expressed as an exemption, an exclusion, or an authority to do something that is otherwise prohibited by the order).

**10 Section 13 amended (Effect of COVID-19 orders)**

Replace section 13(1)(b) with:

- (b) it confers a discretion on any person, or allows any matter or thing to be granted, specified, determined, designated, defined, approved, or disapproved by any person, or allows a person to impose conditions or give directions, whether or not there are prescribed criteria. 5

**11 Section 21 amended (Power to give directions)**

- (1) In section 21, after “a COVID-19 order”, insert “or a rule made under **section 32Q**”. 10

- (2) In section 21(a), after “the order”, insert “or rule”.

**12 Section 22 amended (Power to close roads and public places and stop vehicles)**

- (1) In section 22(2), replace “authority” with “supervision”. 15

- (2) After section 22(3), insert:

- (3A) For the purpose of enforcing or monitoring compliance with a COVID-19 order that restricts movement by persons with or without vehicles, a constable may stop a vehicle at any road block or checkpoint established for that purpose.

- (3) After section 22(4), insert: 20

- (5) An enforcement officer may also stop a vehicle for the purpose stated in **subsection (3A)** if acting under the supervision of a constable.

- (6) For the purpose of **subsection (5)** only, **enforcement officer** means a person authorised in accordance with section 18 who is—

- (a) a member of the Armed Forces (as defined in section 2(1) of the Defence Act 1990): 25

- (b) any person whom the Commissioner recognises as being—

- (i) a Māori warden; or

- (ii) a nominated representative of an iwi organisation; or

- (iii) a Pasifika warden; or 30

- (iv) a community patroller.

- (7) Section 18 applies with any necessary modifications for the purpose of **subsection (6)**.

**13 Section 26 replaced (Offences relating to compliance with orders)**

Replace section 26 with: 35

**26 Offences and infringement offences**

- (1) A person commits an offence if the person intentionally fails to comply with a COVID-19 order.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to,— 5
- (a) for an individual,—
    - (i) imprisonment for a term not exceeding 6 months; or
    - (ii) a fine not exceeding \$12,000:
  - (b) for any other person, a fine not exceeding \$15,000.
- (3) A person commits an infringement offence if the person— 10
- (a) does anything specified as an infringement offence in this Act or a COVID-19 order; or
  - (b) breaches a rule made under **section 32Q**.
- (4) A person who commits an infringement offence is liable to— 15
- (a) an infringement fee of,—
    - (i) for an individual, \$4,000 or any lesser or equal amount prescribed by regulations made under **section 33**; or
    - (ii) for any other person, \$12,000 or any lesser or equal amount prescribed by the regulations; or
  - (b) a fine imposed by a court not exceeding,— 20
    - (i) for an individual, \$12,000 or any lesser or equal amount prescribed by the regulations; or
    - (ii) for any other person, \$15,000 or any lesser or equal amount prescribed by the regulations.

**14 Section 27 amended (Offences relating to exercise of enforcement powers)** 25

Replace section 27(4) with:

- (4) A person who commits an offence against any of subsections (1) to (3) is liable on conviction to,—
- (a) for an individual,—
    - (i) imprisonment for a term not exceeding 6 months; or 30
    - (ii) a fine not exceeding \$12,000:
  - (b) for any other person, a fine not exceeding \$15,000.

**15 Section 28 amended (Proceedings for infringement offences)**

Replace section 28(2) with:

- 
- (2) Proceedings commenced in the way described in subsection (1)(a) do not require the leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957.
- (3) *See* section 21 of the Summary Proceedings Act 1957 for the procedure that applies if an infringement notice is issued. 5
- 16 Section 32B amended (MIQF costs subject to recovery)**  
In section 32B, delete “relevant”.
- 17 Section 32C amended (Criteria for cost recovery)**  
In section 32C, delete “relevant”.
- 18 Section 32E amended (Persons in respect of whom prescribed charges payable)** 10
- (1) Repeal section 32E(1)(a)(ii).
- (2) Replace section 32E(2) with:
- (2) An **exempt person** is a person who is, or is a member of a class of persons that is, exempted under regulations made under section 33A from paying the prescribed charges. 15
- 19 Section 32F amended (Exemptions, waivers, and refunds)**  
Replace section 32F(2) with.
- (2) Regulations made under section 33A may authorise the Minister or the chief executive to exempt, waive, or refund the whole or part of any prescribed charge, or defer the time for payment, in any particular case or any class or classes of cases (and may or may not prescribe criteria to be applied by the Minister or the chief executive in doing so). 20
- 20 Section 32G amended (Payment of charge)**  
In section 32G(2), delete “of MBIE”. 25
- 21 Section 32H amended (Express authorisation for purpose of section 65K of Public Finance Act 1989)**  
In section 32H, replace “relevant Minister or the chief executive of MBIE” with “Minister or the chief executive”.
- 22 New subpart 3B of Part 2 inserted** 30  
After section 32I, insert:

Subpart 3B—Management of MIQFs and other places of isolation or quarantine

*Management of allocations*

**32J Interpretation**

In this subpart, unless the context otherwise requires,— 5

**confirmed allocation** means a confirmed allocation issued under the managed isolation allocation system to an MIQF

**managed isolation allocation system** means a managed isolation allocation system operated by or on behalf of the New Zealand Government

**offline allocation** means an allocation in the managed isolation allocation system than is not an online allocation 10

**online allocation** means an allocation obtained by registering on the managed isolation allocation system online portal and obtaining a voucher

**New Zealander** means a person who is a New Zealand citizen or residence class visa holder. 15

**32K Chief executive responsible for operation of managed isolation allocation system**

(1) The chief executive is responsible for the operation of the managed isolation allocation system.

(2) The chief executive must ensure that the managed isolation allocation system does not at any time permit the issue of more confirmed allocations than the number of available allocations. 20

**32L Apportionment between allocations**

The Minister must determine the apportionment between the issue of online allocations and offline allocations. 25

**32M Online allocations**

(1) Online allocations to MIQFs may be issued on a basis that the Minister decides.

(2) In making a decision under **subsection (1)**, the Minister must take into account— 30

(a) the right of New Zealanders to enter New Zealand; and

(b) the need to mitigate, so far as possible, the social, economic, and other impacts of COVID-19.

(3) The basis on which online allocations to MIQFs are issued may—

(a) distinguish between different classes of persons entering New Zealand (for example, between New Zealanders and non-New Zealanders); and 35

- (b) prioritise allocations as between different classes of persons; and
- (c) reserve for a particular class, or any classes, of persons a specific proportion of allocations.

**32N Offline allocations for individuals and groups**

- (1) Offline allocations to MIQFs may be issued to persons who meet the eligibility criteria determined by the Minister. 5
- (2) An offline allocation may be—
  - (a) an individual offline allocation:
  - (b) a group offline allocation.
- (3) The chief executive must determine individual offline allocations on the basis of the eligibility criteria determined under **subsection (1)** for those allocations. 10
- (4) The Minister must determine group offline allocations on the basis of the eligibility criteria determined under **subsection (1)** for those allocations.
- (5) The chief executive must publish on the responsible agency’s Internet site— 15
  - (a) the eligibility criteria determined under **subsection (1)** for individual offline allocations and group offline allocations; and
  - (b) approved group offline allocations.

**32O Amendment and cancellation of allocations**

- The chief executive may at any time— 20
- (a) amend an online or offline allocation issued to any person (for example, if the starting date for isolation specified in an offline allocation issued to an individual is required to be changed because of a travel delay):
  - (b) cancel an online or offline allocation issued to any person (for example, if the person no longer requires the allocation, or can no longer use the allocation because of a cancelled flight). 25

*Provisions relating to MIQFs or other places of isolation or quarantine*

**32P Restrictions on movement within MIQFs or other places of isolation or quarantine**

- (1) A person required under a COVID-19 order to reside for any period in an MIQF or other place of isolation or quarantine must remain in their room, except— 30
  - (a) to do an activity (such as taking fresh air) authorised, and subject to any conditions imposed, by the chief executive; or
  - (b) if they need to leave to preserve or protect their own or another person’s life, health, or safety in an emergency; or 35

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

Part 1 cl 22

- (c) to attend any court, tribunal, New Zealand Parole Board hearing, or other judicial institution that they are required or permitted to attend by that institution; or
  - (d) if the chief executive is satisfied, on the basis of the advice of a suitably qualified health practitioner, that the person needs to leave— 5
    - (i) to access medical services; or
    - (ii) to move to another place of isolation or quarantine (for example, for temporary or emergency care while the person is sick); or
  - (e) if they are required to leave under Part 4 of the Health Act 1956; or
  - (f) if they are required to move to another place of isolation or quarantine 10 by—
    - (i) a court order; or
    - (ii) any other obligation imposed under an enactment that is related to the detention of the person (for example, a direction of the New Zealand Parole Board or a probation officer); or 15
  - (g) otherwise as permitted under a COVID-19 order.
- (2) However, a person leaving their MIQF or other place of isolation or quarantine under this section must comply with any directions of, or conditions imposed by, the chief executive.
- (3) The chief executive may choose not to exercise their power under **subsection (1)(a)** on any of the following grounds: 20
- (a) it is necessary to prevent the risk or spread of COVID-19 and the chief executive has consulted the Director-General:
  - (b) to ensure the health and safety of workers and returnees in an MIQF or other place of isolation or quarantine: 25
  - (c) to ensure the security of an MIQF or other place of isolation or quarantine.
- (4) In deciding whether to restrict a person to their room in an MIQF or other place of isolation or quarantine, the chief executive may have regard to the operational and resourcing implications of the decision for the MIQF or other place of isolation and quarantine. 30
- (5) A person who intentionally fails to comply with **subsection (1)** commits an offence and is liable on conviction to—
- (a) imprisonment for a term not exceeding 6 months; or
  - (b) a fine not exceeding,— 35
    - (i) for an individual, \$12,000; or
    - (ii) for any other person, \$15,000.
- (6) A failure to comply with **subsection (1)** is an infringement offence.



**32Q Chief executive may make rules**

- (1) The chief executive may make rules for the purpose of ensuring the effective and orderly operation of MIQFs, including (without limitation) rules—
- (a) prohibiting or restricting (with or without conditions) the things (including alcohol, goods, and other items) that can be brought into, sent out of, or removed from an MIQF: 5
  - (b) restricting or prohibiting (with or without conditions) specified behaviour of persons within, or going to or from, an MIQF:
  - (c) specifying that a breach of a rule is a particular class of infringement offence (with the corresponding penalties) for the purposes of regulations made under **section 33(1)(b)**. 10
- (2) The chief executive must be satisfied that the rules do not limit or are a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990.
- (3) Rules made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 15

**32R Power to seize and hold things**

- (1) The chief executive may seize and hold anything that a person in isolation or quarantine in an MIQF possesses in the MIQF, or attempts to bring into the MIQF, in breach of rules made under **section 32Q** (for example, alcohol in excess of limits specified in the rules). 20
- (2) The chief executive may seize and hold anything being delivered to a person staying in isolation or quarantine in an MIQF if the chief executive has reasonable grounds to believe the thing being delivered is not permitted under the rules. 25
- (3) Anything held by the chief executive under this section may be held only for the duration of the person's stay in isolation or quarantine in the MIQF.

*Complaints process*

**32S Complaints process relating to management of MIQFs**

- (1) The chief executive must establish a complaints process that provides for the responsible agency to receive and investigate complaints from affected individuals about— 30
- (a) the operation and day-to-day running of an MIQF; or
  - (b) exemptions from any requirement to remain in an MIQF; or
  - (c) prescribed charges for MIQF costs; or 35
  - (d) MIQF allocations; or
  - (e) the managed isolation allocation system; or
  - (f) managed isolation and quarantine.

- (2) The chief executive must ensure that, as far as practicable, the process enables complaints to be dealt with fairly, efficiently, and effectively.
- (3) The chief executive must ensure that the complaints process is publicly available, by publishing details of the complaints process on the responsible agency's Internet site or in some other manner accessible to the public free of charge. 5

*Information collection*

**32T Persons in respect of whom charges are payable to provide contact details**

- (1) A person in respect of whom charges are payable under section 32E must provide the responsible agency with the following contact information for the purpose of invoicing prescribed charges for MIQF costs: 10
  - (a) their full name as it appears on their passport:
  - (b) a phone number on which they can be contacted:
  - (c) an email address at which they can be contacted:
  - (d) their contact address. 15
- (2) If the person's contact details change before they pay their prescribed charges, they must update those details as soon as practicable.
- (3) A failure to comply with **subsection (1) or (2)** is an infringement offence.

**23 Section 33 replaced (Regulations)**

Replace section 33 with: 20

**33 Regulations**

- (1) The Governor-General may, by Order in Council, make regulations—
  - (a) prescribing penalties for infringement offences, which,—
    - (i) in the case of infringement fees, must not be more than— 25
      - (A) \$4,000, for an individual; or
      - (B) \$12,000, for any other person; and
    - (ii) in the case of fines, must not be more than—
      - (A) \$12,000, for an individual; or
      - (B) \$15,000, for any other person:
  - (b) prescribing different penalties for different infringement offences or classes of infringement offences, defined in any way (including by the seriousness of the offence or whether it is a repeat offence), so that (for example)— 30
    - (i) the regulations may prescribe a fixed infringement fee or fine, or different infringement fees or fines, for an infringement offence 35 under **section 32P(6) or 32T(3)**:

(ii)	a COVID-19 order may specify that an infringement offence specified in a COVID-19 order belongs to a certain class (with corresponding penalties):	
(iii)	a rule made under <b>section 32Q</b> may specify that an infringement offence for a breach of the rule belongs to a certain class (with corresponding penalties):	5
(c)	prescribing the form of infringement notices and reminder notices, and the information to be included in the notices:	
(d)	providing for anything that this Act says may or must be provided for by regulations:	10
(e)	providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act.	
(2)	Regulations made under this section are secondary legislation ( <i>see</i> Part 3 of the Legislation Act 2019 for publication requirements).	
<b>24</b>	<b>Section 33A amended (Regulations relating to cost recovery)</b>	15
	In section 33A(1), replace “relevant Minister made after consultation with the Minister (as defined in this Act)” with “Minister”.	
<b>25</b>	<b>New sections 33B and 33C inserted</b>	
	After section 33A, insert:	
<b>33B</b>	<b>Incorporation of material by reference in COVID-19 orders</b>	20
(1)	The following standards, requirements, recommended practices, or material that is relevant to the purpose of this Act may be incorporated by reference into any COVID-19 order or other secondary legislation (an <b>instrument</b> ) made or given under this Act:	
(a)	standards, requirements, or recommended practices published by or on behalf of any body or person in New Zealand or in any other country:	25
(b)	standards, requirements, or recommended practices of international or national organisations:	
(c)	standards, requirements, or recommended practices of any country or jurisdiction:	30
(d)	any other material that, in the opinion of the Minister (or, as appropriate, the Director-General), is too large or impractical to be printed as part of the instrument concerned.	
(2)	Material may be incorporated in an instrument in whole or in part, and either unmodified or with any additions, omissions, or variations that are specified in the instrument.	35
(3)	Material that is incorporated by reference in an instrument is to be treated for all purposes as forming part of that instrument.	

- (4) Every reference in an instrument to the current edition of any standard work of reference is, unless the instrument otherwise specifies, to be construed at any particular time as the latest edition of that work available at that time, together with any amendments, additions, and deletions made to or from it up to that time. 5
- (5) If any amendment to material incorporated by reference under this section (other than to any standard work of reference) is made, that amendment does not take effect until the date specified for that purpose by the Director-General by notification in the *Gazette*.
- (6) An instrument that incorporates material by reference under this section must state where the material can be accessed in accordance with **section 33C(3)**. 10
- (7) A **standard work of reference** is a work of reference that the Director-General considers is recognised either domestically by the Ministry of Health, or internationally, as one to refer to on its subject matter.
- 33C Availability and proof of material incorporated by reference** 15
- (1) If material (other than a standard work of reference) is incorporated by reference in an instrument under **section 33B**, a copy of the material and any amendment to the material must be—
- (a) certified as a correct copy of the material by the Director-General; and
- (b) retained by the Director-General. 20
- (2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient evidence of the incorporation in the instrument of that material.
- (3) The Director-General must—
- (a) make copies of all material incorporated in an instrument by reference available for inspection, free of charge, at the head office of the Ministry of Health and at other places that the Director-General determines are appropriate; and 25
- (b) make copies of the material available, free of charge, on an Internet site maintained by or on behalf of the Ministry of Health; and 30
- (c) either make copies of the material available for purchase, at reasonable cost, or advise where copies of the material may be obtained.
- (4) The Director-General may comply with **subsection (3)(b)** by providing a hypertext link from an Internet site maintained by or on behalf of the Ministry of Health to a copy of the material that is available, free of charge, on an Internet site maintained by or on behalf of someone else. 35
- (5) The Director-General is not required to comply with **subsection (3)(b) or (c)** if doing so would infringe copyright in the material or be inconsistent with any other enactment or rule of law.

**26 Schedule 1 amended**

- (1) In Schedule 1, clause 5(3), delete “of MBIE”.
- (2) In Schedule 1,—
  - (a) insert the Part set out in Schedule 1 of this Act as the last Part; and
  - (b) make all necessary consequential amendments. 5

**Part 2**

**Consequential amendments to other Acts**

*Amendment to Summary Proceedings Act 1957*

**27 Principal Act**

**Section 28** amends the Summary Proceedings Act 1957. 10

**28 Section 2 amended (Interpretation)**

In section 2(1), definition of **infringement notice**, after paragraph (jg), insert:

(jh) section 30 of the COVID-19 Public Health Response Act 2020; or

*Amendment to Secondary Legislation Act 2021*

**29 Principal Act**

**Section 30** amends the Secondary Legislation Act 2021. 15

**30 Schedule 14 amended**

In Schedule 14, repeal the items relating to sections 11 and 33 of the COVID-19 Public Health Response Act 2020.

**Schedule**  
**New Part 2 inserted into Schedule 1**

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<b>Part 2</b>	
<b>Provisions relating to COVID-19 Public Health Response Amendment Act (No 2) 2021</b>	5
<b>6 Interpretation</b>	
In this Part,—	
<b>amendment Act</b> means the COVID-19 Public Health Response Amendment Act (No 2) 2021	10
<b>commencement</b> means the date appointed under <b>section 2(1)</b> for the commencement of new <b>section 26(4)</b>	
<b>new section 26(4)</b> means <b>section 26(4)</b> as set out in <b>section 13</b> of the amendment Act.	
<b>7 Penalties for infringement offences committed before commencement</b>	15
A person who commits an infringement offence under this Act before commencement is liable to—	
(a) an infringement fee of \$300; or	
(b) a fine imposed by a court not exceeding \$1,000.	