



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

18 November 2021

Presented to the House of Representatives under Standing Order 272.

J.17

Introduction

This legislative statement supports the **Third Reading** of the COVID-19 Public Health Response Amendment Bill (No 2) (the Bill), which proposes amendments to the *COVID-19 Public Health Response Act 2020* (the COVID-19 Act) to strengthen the legislative framework to support the response to COVID-19 in New Zealand.

The Bill amends the COVID-19 Act to incorporate what has been learned about the COVID-19 pandemic to date and improve the flexibility and agility of the legislative framework.

The Bill:

- **extends the term of the Act** until May 2023
- **broadens the purposes for which a COVID-19 order can be made**, for the purposes of preventing, containing, reducing, controlling, managing, eliminating, or limiting the risk of the outbreak or spread of COVID-19 and/or avoiding, mitigating, or remedying its actual or potential adverse public health effects
- **allows for COVID-19 orders to be made in relation to the management and regulation of laboratory testing and consumables**, including compensation for any requisition of laboratory testing consumables
- **increases the maximum penalties** that may be imposed for a breach of a COVID-19 order, the Act or new MIQ-related rules, and **allows for classes of infringement offences to be set out in regulations** to allow for graduated penalty-setting
- widens the power for delegated decision-making to the Director-General and the chief executive of the agency responsible for MIQ
- **extends the power to stop vehicles** to enforcement officers under supervision of constables to listed enforcement officers acting under the supervision of a constable
- shifts several provisions related to the management of MIQ from the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 into the Act, including:
 - the **powers related to MIQ allocations**, with amendments to
 - **managing people's movement to, from, and within, MIQs**
- **reverses the fee liability for MIQ**, so that by default all people in MIQ are liable for MIQ charges unless exempt in the regulations
- enables the chief executive responsible for MIQ to **collect information for invoicing purposes**

- **allows rules to be made** to manage the day-to-day operation of MIQFs, including a holding power to prevent deliveries that breach the rules from entering facilities
- requires an **internal complaints process** to be in place in relation to MIQ.

The Bill was introduced to the House on Tuesday 21 September, had its First Reading on Wednesday 29 September and was then referred to the Health Select Committee. The Committee received 14,626 submissions and heard oral evidence from 91 submitters, reporting back to the House on 11 November 2021.

Changes to the Bill proposed by Select Committee

- Based on the advice of the Regulations Review Committee, **section 10**, which provides for the Director General making COVID-19 orders, has been amended. It now requires the Director-General, if making a COVID-19 order, to be satisfied that the COVID-19 order is consistent with the New Zealand Bill of Rights Act 1990 (NZBORA) and that the order is appropriate to achieve the purpose of the COVID-19 Public Health Response Act 2020 (the Act).
- **Section 11(1)(aa) and (ba)**, two of the sections setting out the content of COVID-19 orders, further extend the purpose for which COVID-19 orders may be made to include for avoiding, mitigating, or remedying the actual or potential adverse public health effects of the outbreak of COVID-19 (whether direct or indirect).
- Based on the advice of the Regulations Review Committee, **section 12(2)(aa)** prohibits a COVID-19 order from applying to a specific individual. This applies in the Act but had been removed accidentally in the Bill.
- **Section 22(3A) and (5)**, which deal with enforcement officers and constables stopping vehicles at checkpoints, now allow a constable or enforcement officer to stop a person as well as a vehicle.
- **New sections 32M and 32N**, relating to online and offline MIQ allocations, include express reference that the Minister must take into account the right at section 18(2) of NZBORA when determining online allocations, as well as the need to mitigate social, economic, and other impacts of COVID-19 when determining eligibility criteria for offline allocations.
- **New section 32R**, which provides for a holding power to enforce MIQ rules, no longer contains the term “seize”, to clarify that this is a holding power only and does not involve inspection or search.
- **New section 32P**, dealing with movement restrictions in MIQ, now expressly requires the chief executive of the agency responsible for MIQ to consider NZBORA, no longer includes a penalty for body corporates (as they cannot stay in MIQ) and provides that failing to comply with conditions imposed by the chief executive can be an infringement offence or an offence.
- Based on the advice of the Regulations Review Committee, **section 33** requires that regulations made under the Act must be done so upon the recommendation of the Minister. Before recommending the regulations, the Minister must have regard to the severity and impact of breaches, the appropriateness of the penalty, and any comparable penalties.
- **A new provision (clause 25A / section 34A)** has been included to prohibit the use of contact tracing information that it is mandatory to collect under a COVID-19 order from being used for any other purpose. This provision is intended to provide an additional legal safeguard against misuse personal identifiable information on top of current privacy legislation. A penalty of 6 months imprisonment and/or a maximum fine of

\$12,000 has been included for an individual. A maximum fine of \$15,000 has been included for body corporates. No infringement offence has been included.

- The Bill also includes a range of **minor and technical amendments** to the Act and **consequential amendments to secondary legislation** to ensure consistency with the Act.