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

Departmental Report

Prepared by the Ministry of Health and the Ministry of Business, Innovation and Employment

October 2021

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Glossary

Act	Refers to the COVID-19 Public Health Response Act 2020.
chief executive	Refers to the chief executive of the agency responsible for MIQ. This is currently the Chief Executive of the Ministry of Business, Innovation and Employment.
COVID-19 orders	Refers to orders made under section 11 of the COVID-19 Public Health Response Act 2020.
Director-General	Refers to the Director-General of Health, who is the Chief Executive of the Ministry of Health under the Public Service Act 2020 (and the New Zealand Public Health and Disability Act 2000).
Elimination Strategy	Refers to New Zealand's sustained approach to COVID-19 by 'keeping it out, finding it, and stamping it out' to keep New Zealanders safe from COVID-19.[1]
HSWA	Refers to the Health and Safety at Work Act 2015.
IPC	Refers to infection prevention and control.
MIQ	Refers to managed isolation and/or quarantine.
MIQFs	Refers to managed isolation or quarantine facilities. This is defined in the Act as a facility that is designated by the New Zealand Government for use as a place of isolation or quarantine.
NZBORA	Refers to the New Zealand Bill of Rights Act 1990.
TRWU	Refers to Te Rōpū Whakakaupapa, the National Māori Pandemic Group.

[1] See **https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-response-planning/covid-19-elimination-strategy-aotearoa-new-zealand**

Part 1: Introduction

The COVID-19 Public Health Response Amendment Bill (No 2) (the Bill) was read the first time and referred to the Health Select Committee (the Committee) on 29 September 2021.

This report has been prepared by officials at the Ministry of Health and the Ministry of Business, Innovation and Employment (MBIE) to provide information about the written and oral submissions to the Committee, and to make recommendations for amendments to the Bill, for the Committee's consideration.

Overview of the Bill

The Bill amends the COVID-19 Public Health Response Act 2020 (the Act), which was made in May 2020 to create a legislative framework to support New Zealand's response to COVID-19. While the Bill was developed during a period when COVID-19 was contained at New Zealand's air and maritime borders, it was expressly prepared in anticipation of a future shift away from an elimination strategy. The Bill makes amendments to the Act to better support the Government's continued response to the COVID-19 pandemic, in a flexible and agile way, as this continues to evolve over the coming months.

The Bill:

- extends the term of the Act until May 2023
- broadens the purposes for which a COVID-19 order can be made
- allows for COVID-19 orders to be made in relation to the management of laboratory testing and consumables
- increases the maximum penalties that may be imposed for a breach of a COVID-19 order, the Act or new MIQ-related rules
- 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
- 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
    - managing people's movement to, from, and within, MIQFs
- 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 require information for invoicing purposes
- allows rules to be made for manage the day-to-day operation of MIQFs, and
- requires an internal complaints process to be in place in relation to MIQ.

Overview of submissions

In total, the Committee:

- received approximately 15,000 written submissions, half of which were form submissions, primarily from Voices for Freedom and the Outdoors Party, and
- also heard from individuals and organisations at oral hearings on the 14th and 15th October 2021.

Of these, just over 1000 submissions engaged with or referenced the Bill itself, though many briefly. There were approximately 1700 references to different provisions within the Bill across these submissions.

Of the approximately 1,000 submissions that addressed the Bill, the most referenced provisions were the empowering provisions of the COVID-19 orders (around 500 submissions), the extension of the term of the Act (around 300 submissions) and the increase to infringement and criminal penalties (also around 300 submissions). The power for enforcement officers to stop vehicles when supervised by a constable and the sub-delegation of powers to the Director-General or chief executive each received around 150 submissions. All other policies were referenced by very few submitters, ranging from fewer than 10 to around 60 references.

The approximately 14,000 remaining submissions did not relate directly to the legislative changes proposed in the Bill, but reflected deeply held concerns by some parts of the community around the Government's response to COVID-19. These submitters were particularly concerned with vaccination and the Government's management of the current COVID-19 outbreak, including comments on the mandatory isolation of COVID-19 cases.

There were also many submissions which raised concerns broadly about human rights and the consistency of the Act with the NZBORA but did not address any specific element of the Bill.

Many submitters expressed concerns that Government would have an unfettered ability to require mandatory vaccination, detain the unvaccinated, subject people to compulsory medical testing, examination or experimentation, or otherwise infringe their human rights without justification.

A significant number of submissions referenced oppressive governments of the past.

Officials note that consultation on the Bill coincides with a point in time where vaccination is at the centre of the Government's response to COVID-19 and Auckland has been at an elevated alert level since August. It is also apparent that many submitters have drawn on information distributed by a small handful of organisations, evidenced by the repetition of key phrases and paragraphs across many different submissions received by the Committee.

While officials acknowledge the genuine fears and concerns expressed by submitters, our role as advisors to the Committee is to assist the Committee in its consideration of the Bill. The remainder of this report, therefore, will focus on the minority of submissions (around 1000) which related directly to the Bill itself, and especially those in which submitters made specific recommendations to improve the Bill.

Parliamentary Counsel Office's advice

Recommendations set out in this report are subject to the Parliamentary Counsel Office's (PCO) discretion concerning how best to express each recommendation in legislation. PCO will provide separate advice on these matters to the Committee. In addition, the PCO may recommend further amendments to the Bill that are:

- a consequence of implementing a recommendation made by the Ministry of Health and/or MBIE
- necessary for the overall coherence of the legislation
- required editorial changes.

Note that any additional changes made to the Bill by PCO will relate to technical matters of drafting, not to policy decisions. PCO will identify these changes for the Committee's consideration in the RT version of the Bill to be considered early in November 2021.

Structure of this report

The rest of this report is structured as follows:

Part 2 Significant issues raised that relate to the Bill.

Part 3 Questions from the Committee.

Part 4 Additional technical amendments recommended by officials.

Part 2: Significant issues raised that relate to the Bill

Submitters raised several issues that relate directly to the Bill which fall into the following categories:

- equity
- human rights and NZBORA
- extending the term of the Act
- increased penalties
- COVID-19 orders (including management of laboratory testing)
- management of Police checkpoints during restricted movements
- rules for the effective and orderly operation of MIQFs
- restriction of movement in MIQ
- management of MIQ allocations, and
- requirement to have MIQ complaints process.

Almost no submissions related directly to proposals in the Bill to reverse the starting point for MIQ charges or the new ability to require information for invoicing purposes.

2.1: Equity

Several submitters expressed concerns about COVID-19 having a disproportionately negative impact on some populations in New Zealand, particularly Māori and Pasifika. There was concern that the broad powers in the Bill, and in the Act, could be used in a way that perpetuates a cycle that negatively impacts on vulnerable communities. The Pacific Child, Youth and Family Integrated Care (PACYFIC) Trust submitted that the Bill disregards Pasifika values and the process deliberately alienates Pacific peoples.

Departmental comment

Officials acknowledge the equity issues raised by submitters. Māori and Pacific populations have been disproportionality impacted by the COVID-19 pandemic. The Auckland August 2020 resurgence illustrated the increased exposure risk faced by Māori and Pacific populations, which comprised 82.1% of the 179 cases identified in that cluster.

To protect vulnerable communities from further transmission of COVID-19 and the impacts of this there is a need for the Government to be able to set essential public health restrictions in orders under the Act. While enforcement may be necessary in certain cases, the Government expects enforcement officers to seek to engage, educate and partner with communities to implement the restrictions in the first instance.

Recommendation

No changes are recommended.

2.2: Te Tiriti o Waitangi

A number of Māori organisations, iwi and hapu submitted on the Bill, including:

- Te Pāti Māori
- National Urban Māori Authority
- Whānua Ora Commissioning Agency
- Te Whānau o Waipareira
- Te Rūnanga o Ngāti Whātua
- Te Rōpū Whakakaupapa Urutā (National Māori Pandemic Group) (TRWU)
- Te Hapu o te Wakaminenga Wahi o Maniapoto o Nu Tireni
- Hapai Te Hauora Tapui Limited

A common theme in submissions from these organisations was concern that the Bill in its current form does not uphold Te Tiriti o Waitangi. Specifically, Te Pāti Māori expressed concern that the Bill does not provide for protections for Māori. It recommended introducing a Te Tiriti o Waitangi clause that requires consultation with and consent from the Minister for Māori Development for all COVID-19 orders.

The National Urban Māori Authority, Whānua Ora Commissioning Agency, and Te Whānau o Waipareira supported the submission from Te Pāti Māori.

Additionally, Te Pāti Māori and Te Rūnanga o Ngāti Whātua recommended that section 20 of the Act should be amended by the Bill to remove the power of warrantless search of Marae and align the wording with a similar provision in the Water Services Act 2021.

Departmental comment

Officials acknowledge Te Tiriti o Waitangi and the Crown's responsibility to partner and protect Māori rights and interests. As outlined in Table 1 below, all COVID-19 orders are subject to review and scrutiny by the House of Representatives, and we do not consider that an additional consultation requirement is warranted in order for the Crown to discharge its Te Tiriti obligations in this context.

Detail regarding warrantless search of marae is provided in response to the Committee's question in Part 3.1:

Recommendation

No changes are recommended.

2.3: Human rights and NZBORA

Most submitters expressed concern that the provisions in the Bill, and the Act generally, represented breaches (or potential breaches) of their human rights, or breaches of the NZBORA.

Submitters appear to have generally interpreted the rights in the NZBORA as absolute and viewed the empowering provisions in clause 7 of the Bill as enabling the Minister to make orders that would breach those rights.

Departmental comment

Under the NZBORA, rights are not absolute and may be limited, if doing so can be justified in a free and democratic society[2]. The Ministry of Justice has published comprehensive guidance on how to interpret this provision of the Act and the amendments proposed in the current Bill have been developed to ensure that any limitations on NZBORA are justified.

Prior to the Bill's introduction to the House of Representatives it was reviewed by the Attorney General[3]. In this review the Attorney General has advised that while there are a number of provisions in the Bill which do impact the rights and freedoms protected by NZBORA, the changes proposed are reasonably justifiable in accordance with section 5 of NZBORA.

Human rights and NZBORA considerations are also imbedded into how the law is operated and are at the forefront of decision-making every time a COVID-19 order is made. There are many safeguards in the law (unchanged by the current Bill) which ensure that the legal powers afforded by the Act must continually be justified. These safeguards are outlined in the table below:

Table 1: Existing safeguards and limitations in the Act

Type of limitation	Mechanisms
Limits on the purposes for which COVID-19 orders can be made	• Before the Minister can make a COVID-19 order, they must be satisfied that the COVID-19 order is appropriate to achieve the purpose of the Act[4]. • The Minister or Director-General may only make a COVID-19 order for one or more of the purposes set out in section 11 of the Act (as it would be amended by the Bill)

[2] See section 5 of the New Zealand Bill of Rights Act 1990

[3] https://www.justice.govt.nz/assets/Documents/Publications/20210914-NZ-BORA-Advice-COVID-19-Public-Health-Response-Amendment-Bill.pdf

[4] See section 4 of the COVID-19 Public Health Response Act 2020

Prerequisites for all COVID-19 orders	• A COVID-19 order can only be made only: o while an epidemic notice under section 5 of the Epidemic Preparedness Act 2006 is in force for COVID-19, or o while a state of emergency or transition period in respect of COVID-19 under the Civil Defence Emergency Management Act 2002 is in force, or o if the Prime Minister, by notice in the Gazette, after being satisfied that there is a risk of an outbreak or the spread of COVID-19, has authorised the use of COVID-19 orders (either generally or specifically) and the authorisation is in force.
Limits on the circumstances in which the Minister may make COVID-19 orders	• The Minister may only make a COVID-19 if they: o have had regard to advice from the Director-General about the risk of an outbreak or spread of COVID-19, and the nature and extent of measures that are appropriate to address those risks o have had regard to any decision by the Government on the level of public health measures appropriate to respond to those risks and avoid, mitigate or remedy the effects of the outbreak or spread of COVID-19 o **are satisfied that the order does not limit or is a justified limit on the rights and freedoms in NZBORA** (emphasis added) o has consulted the Prime Minister, the Minister of Justice, the Minister of Health and any other Minister that the Minister for COVID-19 thinks fit, and o are satisfied that the order is appropriate to achieve the purposes of the Act
Limits on the circumstances in which the Director-General may make COVID-19 orders	• The Director-General may only make a COVID-19 order if, in their opinion, the order is urgently needed to prevent or contain the outbreak or spread of COVID-19, and the order is the most appropriate way of addressing those matters at the time. • A COVID-19 order made by the Director-General can only apply within boundaries described in the order that are relevant to the circumstances addressed by the order;
Limits on the application of COVID-19 orders	• COVID-19 orders for certain purposes may not be made in relation to a private dwellinghouse, a prison, the parliamentary precinct or facilities principally or solely used by the judiciary.
Limits on the commencement and duration of COVID-19 orders	• A COVID-19 order must be published at least 48 hours before it comes into force, except in certain circumstances specified in section 14 of the Act. • A COVID-19 order made by the Director-General automatically expires one month after the date on which it comes into force unless it is sooner revoked or extended.

Requirements for review and scrutiny	• As secondary legislation COVID-19 Orders are subject to:
	  ○ review by the Regulations Review Committee; and
	  ○ disallowance by the House of Representatives.
	• COVID-19 Orders are automatically revoked if not approved by a resolution of the House within the relevant period.
	• The Act is automatically repealed if a resolution of the House of Representatives is not made to continue it every 90 days or after another period of time agreed by the House of Representatives.

The Bill also brings NZBORA to the fore in the MIQ-related provisions. Rules for the orderly and effective running of MIQFs must be consistent with NZBORA, and impacts on New Zealanders' right to enter must be taken into account when deciding the basis for issuing online MIQ allocations. Concerns about the impact on rights that restricted access to time outside of MIQ rooms could have is discussed under Part 2.10: below.

While officials recognise the human rights concerns that have been raised, our position is that any limitations on NZBORA are justified. We consider that the safeguards in place ensure that any restrictions placed on people due to the operation of the Act must be proportionate to the public health risk at a given point in time and is subject to an appropriate level of parliamentary oversight.

Recommendation

No changes are recommended.

2.4: Extending the term of the Act

The Act currently expires in May 2022. The Bill amends section 3 of the Act to extend the expiry until May 2023.

Overview of submissions

Submitters who opposed the extension of the Act generally did so because they considered it to have negative impacts on human rights. More specific objections to extending the Act included views that:

- COVID-19 is not harmful and New Zealand should return to 'normal'
- the Act should be reviewed more frequently (a six monthly review was often suggested or a mechanism to repeal the Act as soon as it is no longer needed)
- vaccination should mean that the powers in the Act (and the Bill) will no longer be needed by May 2022

- the COVID-19 pandemic is no longer an emergency so emergency legislation is no longer warranted, and
- the Act will no longer be needed if the Elimination Strategy is no longer being pursued.

Departmental comment

The safeguards set out in Table 1 at Part 2.3: mean that the legal powers within the Act will only be available to the Government during the time when they are needed. Of particular relevance is the requirement for the House of Representatives to make regular resolutions to stop the Act from being repealed. This means that despite the Bill allowing for the law to still be in place in 2023, the House of Representatives must periodically resolve for it to remain in force even up until this time.

Recommendation

No changes are recommended.

2.5: Increased penalties

Clauses 13 and 14 significantly increase the maximum allowable penalty for infringement offences and criminal offences from the current Act as follows:

Table 2: Increased fees and fines in the Bill

	Current Act	Proposed in the Bill
Maximum infringement fee for individuals	$300	$4,000
Maximum court-imposed fine for individuals (for an infringement offence)	$1,000	$12,000
Maximum infringement fee for any other person	$300	$12,000
Maximum court-imposed fine for body corporates (for an infringement offence)	$1,000	$15,000
Maximum criminal offence fine for individual upon conviction	$4,000	$12,000
Maximum criminal offence fine for body corporate	$4,000	$15,000

Clause 23 introduces the ability to make regulations that prescribe penalties for infringement offences up to the maximum amounts set out in Table 2.

Overview of submissions

Many submitters opposed increasing the maximum allowable infringement fee to the extent proposed. Opposition to fines was less pronounced, primarily because these will be overseen by the courts.

Some submitters expressed concern that higher penalties, combined with a perceived enforcement bias towards Māori and Pacific populations, would exacerbate known systemic inequities in the justice system, the COVID-19 response and health outcomes. TRWU (the National Māori Pandemic Group) and Hāpai Te Hauora strongly opposed the punitive approach reflected in increasing penalties. TRWU highlighted that known biases in the Justice system are likely to be perpetuated by increasing infringement fees.

Submitters also questioned the ability of the public to understand continually evolving rules and the potential for people to be unwittingly caught out for breaching lesser known, or new requirements. Hāpai Te Hauora noted the importance of communicating this information accessibly for Māori whānau.

Graeme Edgeler, a Wellington-based barrister and legal commentator, made the following submissions.

- The proposed infringement offence fees for individuals would be the highest for any offence in New Zealand by a substantial margin and recommended $1,000 as a more suitable maximum.
- Serious breaches should be subject to prosecution with the penalty imposed as a fine following conviction, not as an infringement fee.
- Multipliers of five or six are commonly applied between individual and corporate penalties, meaning that the infringement fee for "any other persons" (being bodies corporate) at $12,000 is not excessive.
- The maximum $15,000 fine proposed for "other persons" (bodies corporate) is not proportionate to the maximum $12,000 fine proposed for individuals. He supported a higher maximum fine for corporations, noting that the application of penalties is subject to conviction and the court process as a safeguard for proportionality.
- Generally, where separate penalties are provided for corporations, a multiplier of at least two, and more commonly, four, is applied. As such, he recommended maximum fines for bodies corporate of between $25,000 and $50,000.

Departmental comment

Increased penalties are intended to protect vulnerable communities

Police observations indicate that compliance is wavering amongst community groups, individuals and businesses that would normally be compliant. Lockdown fatigue is increasing and as of 18 October, Police had received approximately 27,500 breach reports in the preceding nine weeks.

Officials note that Māori and Pacific communities are especially vulnerable to the harms caused by people who breach COVID-19 rules. The policy intent of the increased infringement fees and

fines is to deter ongoing breaches of COVID-19 orders, in order to better protect vulnerable communities from the impact of those breaches.

Maximum penalties will not apply to all breaches

The maximum fees and fines in the Bill are not intended to apply to all breaches, but only to those breaches that will cause the greatest risk of harm to the community. The Bill therefore enables regulations to be made that will set graduated penalties up to the maximum. A cross-agency working group[5] has begun work to develop the regulations and a key consideration of this work is to ensure that higher penalties are not inequitable.

The enforcement approach is graduated

Discretion applied by enforcement officers to support compliance is important. New Zealand Police has an 'engage, encourage, educate, enforce' approach which focuses on assisting people to comply ahead of issuing an infringement notice.

There is support for people to enable them to comply with some requirements

There is financial support available for people who cannot work while waiting for a COVID-19 test result (the COVID-19 Short Term Absence Payment) or who are required to self-isolate (the COVID-19 Leave Support Scheme).

Proportionality

The proportionality of the increased infringement fees and fines for individuals is addressed in detail in response to the Committee's question in Part 3: .

Officials do not recommend increasing the fines for bodies corporate further. Regulations will enable us to ensure that penalties reflect the risk of the breach, and it is likely that the highest risk conduct will be that of individuals rather than bodies corporate.

In addition, other legislation such as HSWA ensures overarching accountability for corporate conduct where criminal activity is concerned.

Recommendation

No changes are recommended.

2.6: COVID-19 orders

Section 11 of the Act enables the Minister to make a range of Orders that provide the legal framework for the Government's COVID-19 response. The Bill replaces existing section 11 with a

[5] Members include representatives from the Ministry of Health, Ministry of Business, Innovation and Employment, Ministry of Justice, Crown Law Office, New Zealand Customs Service, New Zealand Police, WorkSafe and Ministry for Pacific Peoples.

new empowering framework (while retaining the current aspects of section 11 in the Act). The primary changes include[6]:

- expanding the purpose for which COVID-19 Orders can be made,
- amending the definition of "things"
- deeming any goods prohibited from entry into New Zealand under a COVID-19 Order to be a "prohibited import" for Customs purposes
- recognising that orders can be made for the purposes of managing movement in MIQFs or other places of isolation or quarantine
- Allowing the Director General to set bespoke boundaries for COVID-19 Orders rather than relying on existing territorial boundaries, and
- Widening the scope for the Minister to delegate authority to the Director-General or the chief executive to undertake a range of actions related to the provision of a COVID-19 order.

The Bill changes the purpose for making section 11 orders from "limiting the risk of outbreak or spread of COVID-19" to "preventing, containing, reducing, controlling, managing, eliminating, or limiting the risk of outbreak or spread of COVID-19".

Officials also recommend expanding this purpose further to include the purpose of "avoiding, mitigating, or remedying the actual or potential adverse public health effects of the COVID-19 outbreak" (see Part 4:).

These changes will mean that the Act can shift from a focus on elimination, to include a wider focus on prevention, containment and control. The wider purpose of the Act will support the ongoing evolution of our response to COVID-19.

The breadth of section 11

Many submitters commented on aspects of section 11 that are currently part of the Act and are not new in the Bill. They were concerned about:

- allowing COVID-19 orders to be made to require persons to report for, and undergo, medical examination or testing
- allowing COVID-19 orders to be made for the purpose of contact tracing, gathering restrictions and the ability to make orders requiring people to be isolated or quarantined in a specified way
- allowing COVID-19 orders to be made restricting movement in MIQFs, and
- the general breadth of section 11, the use of the term "without limitation" in the chapeau of section 11, and the lack of specificity and clarity in section 11.

Departmental comment

The scope to make COVID-19 orders is necessarily wide. The empowering provision needs to be flexible as our understanding of the public health measures needed to contain the virus evolves.

[6] See clause 7 of the COVID-19 Public Health Response Amendment Bill (No 2)

There are several safeguards that prevent unjustifiable COVID-19 orders being made. These are described in more detail above in Table 1, at Part 2.3: of this report.

Further information regarding the provisions that allow for restriction of movement in MIQFs can be found below at Part 2.9: of this report.

Officials do not recommend any changes to the Bill in consequence of submissions received.

However, officials have identified some further changes that will improve the operation of section 11 in the Bill. These relate to the protection of personal information obtained from scanning QR codes, and minor and technical matters. See Part 4: for a detailed breakdown of the recommended changes.

Recommendation

Further changes to section 11 are recommended as set out in Part 4: of this report

Prohibited imports

The Bill provides that goods prohibited from import under a COVID-19 order will be deemed to be prohibited imports under Section 96 of the Customs and Excise Act 2018.

The form submission from the New Zealand Outdoors Party (which was submitted many times by different submitters), along with others, expressed concern that this provision of the Bill would be used to prohibit the import of Ivermectin[7] or other alternative treatments.

Some submitters opposed the provision in the Bill that defines "things" as including animals, goods, businesses, records, equipment, and supplies, as this provision clarifies that goods can be regulated by COVID-19 orders and therefore can be treated as prohibited imports.

Departmental comment

This provision in the Bill simply clarifies the current provisions in the Act. The import and approval of medicines is generally regulated by the New Zealand Medicines and Medical Devices Authority (Medsafe).

The inclusion of goods in the definition of "things" is a technical change designed to provide more clarity in the legislation. Goods have already been determined to fit into the current definition of "things" in the Act. For example, the COVID-19 Public Health Response (Point-of-

Recommendation

No changes are recommended.

[7] Ivermectin is a medication used to treat parasites such as scabies, anguilulosis, and microfilaraemia. There has been an international alternative movement to use Ivermectin for the treatment of COVID-19, however Medsafe (and other medicine regulatory agencies such as the Therapeutic Goods Administration in Australia and the Food and Drug Administration in the United States) has explicitly advised against this.

care Tests) Order 2021 has prohibited the import of unauthorised point-of-care COVID-19 tests since April.

Sub-delegation

Currently, a COVID-19 order may authorise a person (or a class of persons) to grant exemptions from that COVID-19 order or authorise a specified activity that would otherwise be prohibited by it. Clause 9 of the Bill expands this by giving the Director-General or the chief executive greater discretion to make necessary decisions under an order.

Some submitters expressed concern about the potential for the law to be made at the discretion of non-elected officials and felt that the delegation of power was contrary to the rule of law and public law principles. We also heard that the proposed power was too vague and/or too broad.

Departmental comment

The ability to exercise more discretion will assist with a dynamic and nuanced COVID-19 response, particularly as the focus of the response evolves. The power to delegate to the Director-General and the chief executive[8] has been extended to allow for a flexible and agile COVID-19 response. This new provision builds on the existing provision in the Act, based on the learnings from the COVID-19 response to date, to ensure that the provision is remains fit-for-purpose.

Officials consulted the Regulations Review Committee on the sub-delegation amendment, which was drafted to reflect that Committee's feedback.

Recommendation

No changes are recommended.

Management of laboratory testing

Clause 7 includes new provisions that empower COVID-19 orders to be made for management of testing consumables and laboratories in New Zealand. In particular:

- setting quality control measures and minimum standards
- requiring COVID-19 test results to be reported to a national public health testing repository
- managing the supply of testing consumables in different classes of testing laboratories.

Clause 7 also allows COVID-19 orders to be made which may require the owner, or person in charge, of a specified laboratory that undertakes COVID-19 testing to:

[8] See clause 12 of the COVID-19 Public Health Response Amendment Bill (No 2), amending section 12(1)(d) of the COVID-19 Public Health Response Act 2020.

- deliver or use, in accordance with directions given under the order, specified quantities of COVID-19 testing consumables for the purposes of the public health response to COVID-19, and
- undertake COVID-19 testing solely for the public health response to COVID-19.

Discussion

Comparatively, there was a small number of submissions related to the laboratory management provisions of the Bill. These submitters, however, generally engaged in depth on these provisions.

Organisations that submitted opposing these amendments include:

- the New Zealand Hospital Scientific Officers Association
- Rako Science
- R J Hill Laboratories Limited
- the New Zealand Initiative, and
- Medical Technology Association of New Zealand.

Key comments on these provisions included:

- That the Bill does not provide for compensation for the loss of earnings, and only provides for compensation for requisitioned materials. Submitters stated that the use of these powers could be detrimental to their businesses and that the powers in the Bill represented Government overreach.
- The "market rate" of testing consumables or services would be calculated or whether the availability of the powers to Government would have a detrimental effect on testing laboratories' ability to contract with third parties, due to the risk that the powers may be used.
- The potential detrimental impact on access to medical laboratory services for persons with conditions other than COVID-19, if the powers were to be used.
- That the Ministry of Health would achieve worse outcomes through reliance on a requisitioning power to meet an urgent need for testing than if it undertook appropriate planning and procurement of surge or reserve testing capacity.

Additionally, the New Zealand Nurses Organisation made a submission in support of the amendments.

Committee members also raised questions about options for limiting powers relating to medical testing laboratories which are proposed in the Bill. This is discussed at Part 3.9: of this report.

Departmental comment

While the power to requisition testing consumables or require a testing laboratory to undertake COVID-19 testing solely for the public health response is significant, it is subject to the safeguards outlined in Table 1 under Part 2.3: of this report.

The compensation provision in the Bill puts testing laboratories in a unique position – no other parties affected by a COVID-19 order are legally entitled to compensation or payment from the Crown for the exercise of powers under the Act.

The Bill does not compensate businesses or individuals for the existence of powers, but does provide support if those powers are actually used. All businesses face regulatory risk, and officials do not consider that it would be appropriate generally to compensate testing laboratories (or businesses generally) for that risk.

Officials do not consider that the powers in the Bill would be material in terms of limiting access to testing capacity should the powers need to be used, because the powers would only be used in circumstances where testing capacity would be already be stretched by the virus itself.

Recommendation

No changes are recommended.

2.7: Management of Police checkpoints during restricted movements

Clause 12 of the Bill amends section 22 of the Act to enable the following parties to exercise the power to stop vehicles at a roadblock or checkpoint, under the supervision of a constable and subject to the prior approval by the Commissioner of Police:

- members of the Armed Forces
- Māori Wardens
- nominated representatives of iwi organisations
- Pasifika Wardens, or
- Community Patrollers.

Discussion

Some submitters commented on the training and/or qualifications of some of the community groups that this power has been extended to. Submitters expressed concern that the power granted was too broad, and could be subject to abuse. Clarity was also sought as to what "supervision" by Police would mean in practice.

Some submitters who supported the change thought it would provide better engagement with relevant communities around roadblocks and checkpoints. Hāpai te Hauora commended this change but recommended that "supervision" should be amended to "in partnership" to reflect the mutually dependent relationship between the Police and those with localised knowledge of an area. This would also reflect that iwi are recognised partners of the Crown.

Departmental comment

The amendments to section 22 are designed to balance Police's partnership with communities with the need to protect New Zealanders from the risk of transmission of COVID-19.

Officials consider that sufficient safeguards are in place and note that a constable will be required to actively supervise the activities of authorised enforcement officers.

Officials do not recommend changing "supervision" to "in partnership." We do not consider that this would appropriately reflect the legal protection necessary for this amendment, as "partnership" implies equal responsibility and authority. Constables undertake extensive training to ensure that the power to stop vehicles and enforce roadblocks is exercised appropriately and are subject to a range of checks and balances to ensure Police powers are not overstepped.

Recommendation

No substantive changes are recommended.

Officials recommend some minor, technical changes to ensure that the drafting aligns with the policy intent. See Part 4: for detailed breakdown of the recommended changes.

2.8: Rules for the effective and orderly operation of MIQFs

Clause 22, new section 32Q creates a new ability for the chief executive to make rules for the effective and orderly operation of MIQFs. Clause 13 makes breach of a rule an infringement offence. The rules will specify which class of infringement offence (set in regulations) applies to each rule.

Clause 22, new section 32R provides that the chief executive may hold things that breach the rules, or withhold deliveries where there are reasonable grounds to believe they breach the rules.

Overview of submissions

Some submitters were concerned that the power to make rules is too broad and does not contain enough detail about what rules can be made. Others considered that the rules would infringe on rights and that the infringement penalties were disproportionate. Others expressed concern that the decision-maker is the chief executive responsible for MIQFs.

Some submitters also expressed concern about the ability to hold things that are in breach of the rules, and that this would involve inspection of people's property and amount to unreasonable search and seizure.

Departmental comment

The Bill requires the chief executive to be satisfied that the rules do not limit or are a justified limit on rights in NZBORA. The departmental comments on the concerns raised about rights and the proportionality of infringement fees are set out at Part 2.5: of this report.

The rules will cover the day-to-day requirements that are at a greater level of operational detail than orders, but that are necessary to ensure MIQ delivers its overall public health purpose.

The rules are being developed in parallel to the Bill. The kinds of things that are being considered are requirements that are currently covered in standard operating procedures and MIQ Operations Framework, such as prohibiting smoking in rooms, daily limits on the amount of alcohol that can be delivered to a facility, and restrictions on things that pose a health and safety or fire hazard.

Rules must be made consistently with the purpose of the Act, which is to support a public health response that is, amongst other things, coordinated, orderly and proportionate. This acts as an overarching safeguard on the scope of the rule making power.

The ability to hold things that are, or there are reasonable grounds to believe are, in breach of the rules is necessary to be able to enforce the rules in a practical way. It does not allow for inspection of people's deliveries without their consent or for a person's room to be searched.

The ability to hold things is operationalised in the following ways.

- If MIQ staff have reasonable grounds to believe that a delivery is in breach of a rule, then the item is taken to the intended recipient and they are asked to open the delivery. If the person refuses, then the item is not opened and is held until the end of the person's stay. If the person agrees to open the delivery, the item is only held if it is in breach of the rules.
- If a person has an item in their room that is in breach of the rules then MIQ staff will ask the person to hand the item over. If the person refuses, then this may be escalated to an enforcement officer who is able to direct a person to hand the item over under the Act.

Recommendation

No substantive changes are recommended.

Officials recommend a minor wording change to delete "seize" to make it clearer that there is no power to inspect items or search rooms.

2.9: Restrictions on movement in MIQ

Clause 22, new section 32P sets out restrictions on people's movement in MIQFs and other places of isolation and quarantine. These provisions have been shifted from the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 into the Act. The only change is that it makes it express that the chief executive can choose in certain circumstances not to authorise extra activities outside of rooms, like access to fresh air and exercise.

Overview of submissions

Some submitters raised concerns about the ability to control access to time outside of rooms. Voices for Freedom was concerned that the term "consultation" was not defined and that there was no time-limit on the period that the chief executive could restrict time outside rooms.

The Chief Ombudsman was concerned that restrictions on people's ability to have time outside of their room daily needs to be proportionate to the public health risk. He recommended that the Bill should more clearly provide, as a minimum for all persons, access to time outside their room for fresh air each day.

The Chief Ombudsman also suggested that consideration should be given to recognising the mental and physical impact of room restrictions on people, a more tailored approach for individual circumstances, clearer exemptions, and better communications about what applies to people.

Departmental comment

The ability to manage people's movement is a fundamental infection prevention control in reducing the risk of COVID-19 being transmitted between people in facilities and to workers, particularly with highly transmissible variants like Delta.

The Bill improves the clarity around movement rules in MIQFs by inserting new section 32P. We note that the term "consultation" is well understood in case law on the subject.

Access to time outside of rooms

The primary objective of MIQ is to keep people safe from transmission of COVID-19, including people undertaking MIQ, workers and the community. The starting point, that people must remain in their rooms except for authorised activities or other listed circumstances, reflects this public health position.

However, supporting the wellbeing of people in facilities is a significant part of delivering MIQ. People are more likely to comply with public health measures if they feel well and supported.

MIQ aims to provide an opportunity for people to safely access time outside their room, within public health and operational constraints.

Public health and operational constraints can mean there are limitations on people's ability to have time outside of their rooms. For example, the number of people accessing space for fresh air/exercise needs to be managed to ensure physical distancing, and an appropriate number of staff need to supervise the space. A booking system is in place to help manage this.

Operational constraints are also relevant. MIQFs are not designed to allow for hundreds of people to have time outside of their rooms daily whilst maintaining safe physical distancing and IPC measures. These concerns are not relevant to other detention regimes, such as the Corrections Act 2004, where the right to exercise for at least an hour daily is prescribed in legislation.

We consider that the provision accurately captures the importance of public health by requiring people to stay in rooms as the starting point. Supporting safe access to time outside of rooms is

best considered operationally when the chief executive authorises/does not authorise those activities, taking into account public health and operational constraints.

Restrictions on time outside of rooms – proportionality, pastoral care and communication

Currently, people in MIQFs are restricted from leaving their room for authorised activities (like fresh air, smoking or exercise) in the following situations:

- when people first arrive in a facility until they have returned their day 0/1 test
- if a person becomes symptomatic, they are immediately tested and must stay in their room until the test is returned.

Test processing is prioritised in these situations, and tests are usually returned within 24 hours, though sometimes this can be up to 72 hours.

People are still able to leave their rooms in emergencies, to leave to access medical or support services, to visit fellow residents in their bubble, and other standing reasons.

These restrictions are based on public health advice and are considered proportionate and necessary to reduce the risk of transmission. The restrictions are reviewed regularly to ensure they continue to be proportionate.

The information about these restrictions is available to people before they arrive in facilities. This includes the MIQ website and the restrictions are reiterated in the verbal briefing on transport to facilities, the MIQ Welcome Pack, the testing information sheet provided before day 0/1 tests, and the testing consent form.

MIQ staff are aware of the impact room restrictions can have on people, particularly families and people with mental health and wellbeing concerns. The pastoral care provided to all people in facilities is set out at Part 3.2: below.

During periods where people are not allowed to leave their rooms, staff provide additional support and the frequency of wellbeing checks is increased for those who are assessed by health staff as being vulnerable. Wherever possible, families are given suites for the duration of their stay to ensure they can access space outside of their bedroom without needing to leave the isolation space. Smoking support (e.g. nicotine patches) is also provided to those who need it.

The restrictions generally apply to everyone in the situations above. MIQ facility managers can approve someone leaving their room during these times if a qualified health professional deems it necessary because of severe physical or mental health concerns. These exceptions need to be managed carefully to balance individual welfare with public health risks.

We consider that exceptions to room restrictions should continue to be implemented operationally on a case-by-case basis and monitored through the pastoral and wraparound health services provided. MBIE is reviewing the information provided to people arriving in facilities so that the process around exceptions is clearer.

The Select Committee's question about taking into account impact on individuals and rights is addressed in Part 3.3:

Recommendation

No changes are recommended here. See Part 3.3: for recommended change in response to the Select Committee's question about impact on individuals and rights.

2.10: Management of MIQ allocations

Clause 22, new sections 32J – 32O set framework provisions about managing MIQ allocations. These provisions are currently contained in the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020. The Bill shifts these provisions into the Act with one change – it empowers the Minister, rather than the chief executive, to decide offline allocations for groups.

Table 3: Summary of MIQ allocation provisions

<table>
<tr><th colspan="3">General provisions</th></tr>
<tr><td colspan="3">• The chief executive is responsible for the operation of the managed isolation allocation system and must ensure that confirmed allocations do not exceed the number of available allocations</td></tr>
<tr><td colspan="3">• The Minister decides the apportionment between online allocations and offline allocations (e.g. how many places are available online vs offline)</td></tr>
<tr><td colspan="3">• The chief executive may amend or cancel allocations</td></tr>
<tr><th>Online allocations (MIAS)</th><th colspan="2">Offline allocations</th></tr>
<tr><td rowspan="2">• The Minister decides the basis on which online allocations are issued (e.g. these could be prioritised or ringfenced for certain groups)</td><td colspan="2">The Minister sets the eligibility criteria for offline allocations
Chief executive publishes criteria</td></tr>
<tr><td>Chief executive determines individual offline applications in accordance with criteria</td><td>Minister determines group offline allocations in accordance with criteria*
Chief executive publishes approved group allocations</td></tr>
</table>

Overview of submissions

Very few submitters commented on the specific provisions relating to management of MIQ allocations.

The Chief Ombudsman noted that there is no independent oversight of Ministerial decisions in relation to the managed isolation allocation system aside from judicial review. He noted that the Ministerial decisions could have a significant impact on people's rights and interests.

The Chief Ombudsman recommended that the Committee consider whether some form of oversight of Ministerial decision making, whether by Parliament or otherwise, should be included in the Bill.

Submitters commented that the managed isolation allocation booking system is ineffective and about the limited availability of places in MIQFs. These issues and those noted below are not addressed by the Bill.

BusinessNZ and ExportNZ made submissions about the impact MIQ requirements have had on businesses and exporters. Both organisations raised concerns that there is no dedicated route for businesses to obtain MIQ allocations, and this creates uncertainty for businesses.

ExportNZ submitted that provision should be made for the specific parameters referencing the application of any powers in the Bill the be applied only to high-risk travellers, with officials required to publish clear criteria for risk ratings.

Departmental comment

Oversight of Ministerial decisions

The provisions have been designed so that decisions that have significant or broad impacts on people's rights and interests, or involve broad policy considerations and trade-offs, are made by the Minister. For example, group allocation decisions involve considering the social or economic benefit groups would bring to New Zealand and involve trade-offs across portfolios and government interests.

The Minister is the appropriate decision-maker in these situations because they are ultimately accountable for MIQ and can take decisions in accordance with wider government policies. The chief executive's decisions operationalise the policies decided by the Minister.

Transparency is provided by requiring the exercise of Ministerial decisions to be published online.

We consider that judicial review is the appropriate independent review mechanism for Ministerial decisions that involve significant matters of policy. While additional oversight could be provided in the form of an independent body or tribunal, this would be costly to establish and administer and time intensive for individuals. This is discussed further in the next section under MIQ complaints.

Officials also consider that sufficient Parliamentary oversight exists through Ministers being held accountable for their decisions in the House, and through section 3 of the Act which provides that the House must pass a resolution to continue the Act every 90 days.

Businesses and MIQ

The general issues raised by BusinessNZ and ExportNZ are not directly addressed by the allocation provisions in the Bill. The Bill provides the decision-making powers to set the framework for MIQ allocations – the concerns raised relate to how those powers have been exercised.

There are a number of ways in which MIQ allocations are currently available to businesses within the framework set by the Minister, and further work is underway to support future pathways.

- MBIE maintains an operational target of 10 per cent occupancy of MIQ spaces by critical workers. The average occupancy rate for critical workers from 1 March 2021 to 31 August 2021 is 11.1 per cent.
- Time-sensitive travel allocations (offline allocations) provide an avenue for workers with time-critical travel need to enter New Zealand if they provide a significant benefit for New Zealand.
- Certain business groups within New Zealand have preferential access to MIQ through group allocations – there are 60 spaces per month for the construction industry and a pilot allocation of 25 spaces in November and December 2021 for New Zealand exporters.
- The self-isolation pilot will begin at the end of October. The pilot allows up to 150 people undertaking international business travel to self-isolate. This is part of the Government's "Reconnecting New Zealanders with the World" plan and will allow MBIE and the Ministry of Health to test some aspects of operational readiness for new pathways into New Zealand.

It would be prescriptive and lack flexibility to hardbake a dedicated MIQ allocation pathway for business into primary legislation. This is better dealt with through the exercise of the powers in the Bill and any detail, such as risk-based parameters of requirements, to be set out in COVID-19 orders as required.

Recommendation

Officials do not recommend any changes.

2.11: Requirement to have MIQ complaints process

Clause 22, new section 32S puts an obligation on the chief executive to have a complaints process in place in relation to MIQ. The chief executive must ensure, so far as is reasonably practicable, that the process enables complaints to be dealt with fairly, efficiently and effectively. The complaints process must be made publicly available online. The provision provides a legal backstop that reflects the practice and process MBIE already has in place for MIQ complaints.

Overview of submissions

Fewer than 10 submissions referenced MIQ complaints, although a number of submitters referred to the need for more accountability for people running and exercising powers in MIQFs.

Some submitters considered that the provision should provide more detail about the complaints process. Others considered that the Bill should provide for complaints to be heard by an

independent third party. Submitters considered this would provide a greater degree of scrutiny and safeguard on MIQ powers.

Māori Public Health suggested operational changes to improve the transparency and accessibility of the complaints process, including adding a phone option to submit complaints and an interpreter option to support whānau whose first language is not English to ensure their ability to file complaints.

Departmental comment

It is important to strike the right balance between ensuring appropriate safeguards and transparency, and ensuring there is sufficient flexibility to support a dynamic response.

The Bill does not contain the detail of the MIQ complaints process in order to maintain flexibility and ensure the process can keep pace with the evolving nature of MIQ. Officials consider that an outcomes-based provision best achieves this. The requirement for the process to be published and available online is an important safeguard to ensure accessibility and transparency.

Creating an independent body to consider MIQ related complaints would require significant resource to establish and administer. It would also involve considerable time and resource on the part of complainants. More formal and complex applications and processes could reduce the accessibility of complaints processes for people impacted by MIQ.

Some regimes where people are detained for medical or other non-criminal reasons include bespoke third-party review and appeals processes. However, those regimes often involve much longer periods of detention. A complex and resource intensive process is likely to be disproportionate to the length of time a person is required to be in MIQ (for most people this is 14 days, and at most is 28 days).

Officials consider the existing third-party avenues available through judicial review, the Ombudsman and the Privacy Commissioner continue to be the best way for people to access a third party about their complaints. The Ombudsman monitors MIQFs under OPCAT and the Privacy Commissioner can receive complaints in relation to people's personal information. The Bill does not limit either of these avenues.

Recommendation

Officials do not recommend any changes.

Part 3: Questions from the Committee

3.1: Power of entry onto marae

Why does the Bill not amend the power of entry at section 20 of the Act to explicitly exclude marae?

Warrantless powers of entry to property are conferred by a variety of statutes, including:

- the Health Act 1956
- the Civil Defence Emergency Management Act 2002
- the Search and Surveillance Act 2012
- the Resource Management Act 1991
- the Building Act 2004
- the Land Transport Act 1998
- the Dog Control Act 1996
- the Hazardous Substances and New Organisms Act 1996
- the Local Government Act 2002
- the Mental Health (Compulsory Assessment and Treatment) Act 1992
- the Arms Act 1983
- the Oranga Tamariki Act 1989
- and the Immigration Act 2009
- The Water Services Act 2021.

Generally, the power to enter property conferred by these statutes does not extend to entry to a private dwelling house. Powers to enter private homes appear to be limited to the COVID-19 Public Health Response Act 2020, the Health Act 1956 and the enforcement of laws relating to controlled drugs, firearms and terrorism suppression. In all of these instances, the harm that the statute is seeking to control requires that the State have access to private dwellings.

Where powers of entry are available over private property, marae are generally not excluded. The Water Services Act 2021 is an exception in that it affords protection against warrantless entry to both private homes and marae.

The question as to the appropriateness of applying warrantless powers of entry to marae goes beyond the Act and cannot be considered in isolation from the statues mentioned above. In the

interim, officials note that the ability to enter private property (including marae) remains an important component of the overall public health response; and that it is used sparingly.

3.2: Pastoral care in MIQ

What pastoral care is provided to people in MIQFs?

MIQFs represent a cross-section of the New Zealand community – what we see in our communities can also be experienced in facilities – and that can involve supporting people with health and mental health concerns, addictions, and unfortunately some instances of family harm.

Returnees are able to disclose any health concerns, including mental health concerns before they arrive in MIQ. The information is provided to the clinical team who provide advice around what supports can be provided while in a facility and secure an appropriate room for the returnee's arrival.

Onsite nursing teams and respective charge nurse managers are advised of any expected returnees with health concerns prior to their arrival so they can assess and provide support over their 14 day stay in managed isolation.

Alternatively, returnees may prefer to disclose this information in person to the nursing staff on arrival to the facility.

When returnees arrive at a MIQ facility they have a health and wellbeing assessment carried out by health professionals on site, which includes questions about mental health and wellbeing.

Returnees receive clear guidance on protecting their own and others' health and wellbeing during their stay in managed isolation facilities. This is communicated verbally and is reinforced in their **Welcome Pack** and throughout their stay.

The on-site health teams do daily health checks, either in person or on the phone, and nurses are available 24/7 at the facilities to support returnees and help them access care.

If returnees have any concerns for their health and wellbeing, it is important for them to talk with a health professional. Their first point of contact is the on-site nurse or health staff. Returnees are also able to access a mental health clinician at their facility with the support on on-site nursing staff. Police are in all MIQFs on duty 24/7 – they take the lead on any family harm incidents.

Information is publicly available on the **MIQ website**.

3.3: Restricted access to time outside of MIQ rooms

Should the chief executive be required to take into account any matters relating to the person who is being restricted to their room, or perform any balancing of the person's rights against the MIQF considerations which are listed in the Bill?

Part 2.9: above sets out the situations where people in MIQ are not allowed to leave their rooms for authorised activities (e.g. fresh air, smoking, exercise). That section also describes operational practice and support provided to people during these times.

When deciding not to authorise activities during these times, the paramount consideration is the public health, health and safety or security reason that underpins the decision. However, the decision must be proportionate to the risk and a justified limitation on people's rights under NZBORA. In this context, those rights include freedom of movement and the right to be treated with humanity and dignity while in detention.

NZBORA applies as part of the general law, and decisions must be consistent with it regardless of whether it is expressly referenced in the Bill or not. The chief executive is provided advice to inform decision-making and this includes legal advice about the impact on rights and NZBORA.

The Act is unusual in that it expressly refers to NZBORA throughout, even though this is not necessary for it to apply. This was considered appropriate as a prompt for decision-makers and officials and to provide additional transparency around that safeguard.

To maintain consistency with the rest of the Act, we recommend that a provision is included that requires the chief executive to consider the impacts on people's rights under NZBORA when choosing not to allow access to activities outside of rooms.

It is not practicable to consider the impacts on every individual when making the decision not to authorise people leaving their rooms. We recommend instead that individual circumstances be taken into account for exceptions to room restrictions, as is current practice, and that this should continue to be implemented operationally. They can be monitored through the pastoral and wraparound health services provided. MBIE is working to ensure process around exceptions is more clearly communicated to people.

Recommendation

Officials recommend adding a provision that requires the chief executive to consider the impacts on people's rights under NZBORA when choosing not to allow access to activities outside of rooms.

3.4: Understanding fees and fines

What is the difference between fees and fines?

The Act and Bill contain two types of offences:

- Infringement offences, which are subject to an infringement fee[9].
- Prosecutable (criminal) offences, which are heard before a court and subject to a fine or imprisonment upon conviction.

Infringement offences

Infringement offences are strict liability offences that enable enforcement officers to issue an immediate infringement notice and fee for people who fail to comply with a requirement in a COVID-19 order. Strict liability means the physical evidence of offending is immediate, for example, a speeding ticket or parking infringement. There is no requirement to prove intent on the part of the person committing the breach.

Infringement offences are an efficient means of managing breaches that are straightforward and do not require consideration of evidence and intent by the court.

The Bill sets out the maximum fee for infringement offences, and enables regulations to set graduated penalties for different offences to ensure that the level of the fee is proportionate to the level of harm that could be caused by the breach. The infringement fees for each infringement offence will be set in the regulations, so enforcement officers will not have any discretion in determining the level of fee in individual cases.

Police generally take a four-tiered approach to enforcement – where they engage, educate and encourage compliance before taking enforcement action. Issuing an infringement notice is an enforcement action, and so will only be used when education and encouragement options have failed. Infringement offences provide an important first level of enforcement action before escalation to court proceedings.

The applicable fees and fines for infringement offences in the Bill are:

Maximum infringement fee for individuals	$4,000
Maximum court-imposed fine for individuals (for an infringement offence)	$12,000
Maximum infringement fee for any other person	$12,000
Maximum court-imposed fine for body corporates (for an infringement offence)	$15,000

Prosecutable (criminal) offences

Prosecutable offences apply to more complex or serious breaches, where a case may be heard in the court to determine whether the defendant is guilty of the alleged offence taking into account

[9] Infringement fees can be disputed, in which case a District Court will determine the dispute and may impose a fine

mens rea (intent). Upon conviction, the judge sets the penalty within the maximum limits set in the Act, being either a fine or imprisonment. Clear grounds for prosecution are required and conviction will depend on each element of the offence being established beyond reasonable doubt.

The applicable fines for criminal offences in the Bill are:

Maximum criminal offence fine for individual upon conviction	$12,000
Maximum criminal offence fine for body corporate	$15,000

Likelihood of prosecution

The Committee has asked what the likelihood of prosecution would be in terms of the new fees and fines in the Bill. Officials note that Police operate a four-tiered approach to enforcement as described above. It is not possible at this stage to estimate the likelihood of prosecution for certain offences because that would depend on the number and nature of breaches, the surrounding circumstances associated with those and the exercise of police discretion at the time.

3.5: Increase in infringement fee

Is the increase to the infringement fee above $1,000 justified and appropriate?

Although the Legislation Design and Advisory Committee (LDAC) and Ministry of Justice guidance provides that, in general, infringement fees should not exceed $1,000, a higher fee is justified here given the social and economic impact that a single case of COVID-19 in the community can have.

The current restrictions in place with Auckland and parts of the Waikato at Alert Level 3, and the rest of the country at Alert Level 2 results in reduction in economic activity along with impacts on individual and community wellbeing. The penalties available need to be proportionate to the risk of harm. The potential to cause a COVID-19 outbreak in the community by breaching Orders under the COVID Act (with all of the associated health, social and economic harms) justifies a penalty higher than $1,000.

The LDAC guidance suggests that if infringement fees do exceed $1,000, it is preferable that it is fixed in primary legislation which is proposed in the Bill. The Bill also empowers new regulations to set out an appropriate infringement fee framework to allow for graduated penalties, helping to ensure proportionality by enabling different penalties to apply to different types of infringement offences, up to the maximum penalties prescribed in primary legislation.

The Report of the Attorney General under the NZBORA considered the fees in the Bill and determined these were both a justified limitation on the presumption of innocence (being strict liability offences) and proportionate as they are tied to an important public health objective.

Accordingly, we consider the proposed penalties are justified and appropriate for the offences they seek to deter.

3.6: Comparable infringement fees and fines

What are comparable infringement fees and regimes?

New Zealand law contains a number of infringement provisions that impose penalties in excess of $1,000.

The maximum infringement fee able to be specified in regulations made under the Fisheries Act 1996 (for offences like taking or possessing more than the daily limit for eels or rock lobster) is $3,000 (section 297(1)(nc) of the Fisheries Act 1996 refers). This higher fee is considered important as a deterrent for people committing offences that have a financial incentive. To ensure proportionality, regulations made under the Fisheries Act are able to specify different infringement fees for different infringement offences up to the $3,000 maximum.

The Health and Safety at Work (Infringement Offences and Fees) Regulations 2016 set out a framework for infringement offence fees, whereby the fee for a breach where there is a direct link between the breach and the risk to someone's health and safety is $2,000 for an individual and $9,000 for bodies corporate.

Penalties for comparable criminal offences vary widely between the Health Act 1956, the New Zealand Public Health and Disability Act 2000 and HSWA from $2,000 with no imprisonment, to imprisonment of up to five years or a fine of up to $600,000.

In the Health Act 1956:

- Section 72 imposes upon conviction, a fine not exceeding $4,000, imprisonment not exceeding six months, or both for obstructing a Medical Officer of Health or people assisting a Medical Officer of Health relating to infectious and notifiable diseases, and
- Section 92ZW imposes upon conviction, a fine not exceeding $2,000 or imprisonment not exceeding six months.

Section 86 of the New Zealand Public Health and Disability Act 2000 sets a fine of $10,000 upon conviction for contravening an Order, while HSWA sets a fine upon conviction of up to $50,000 for individuals and $250,000 for other persons for failure to comply with an Order.

3.7: Limitation of the right of appeal for requisition of testing consumables

Is clause 8 (adding section 11A(4)) intended to limit the right of appeal to the District Court, and if so, what is the justification of this limit?

Clause 8 of the Bill has been drafted to limit the right of appeal to the District Court for any disputes relating to claims for compensation and payment arising from:

- the requisition of testing consumables, or
- the requirement for COVID-19 testing only to be undertaken for the public health response.

The intent is to ensure consistency with sections 71 and 87 of the Health Act 1956, which provide for compensation for persons who suffer loss or damage due to the exercise of power by a medical officer of health (for example, if a medical officer of health orders the destruction of contaminated goods to prevent the spread of an infectious disease).

In each case, the Health Act 1956 specifies that any claims for compensation shall be heard by the District Court, with no right of appeal to a superior court.

3.8: Options for limiting powers relating to testing laboratories

What options are available to the Select Committee to limit the powers to make orders relating to:

- the requisition of testing consumables; and
- requiring testing laboratories to only undertake COVID-19 testing for the public health response?

The Bill provides for these powers to be exercised by the Minister for COVID-19 Response or the Director-General of Health making an order under section 11. As a result, there are already significant safeguards and limitations on the exercise of these powers. These have been outlined at Table 1 under Part 2.3: of this report.

In addition, the provisions in the Bill require that a COVID-19 order can only be made in respect of laboratories that must be specifically named in the COVID-19 order. This applies a significant brake on the potential scope of orders that could be issued under section 11(1)(e).

The Committee could also consider any or all of the following options if it wishes to recommend any additional changes to these provisions.

Option	Description
Option 1 **Require additional scrutiny of an order made under section 11(1)(e)**	• The Bill could be amended to impose a requirement for additional scrutiny of an order made under section 11(1)(e) after an order has been made. • For example, orders made under section 11(1)(e) could be subject to review by an additional relevant Select Committee, such as the Health Committee (noting that as secondary legislation, they would already be subject to review by the Regulations Review Committee).
Option 2 **Limit the ability to make an order under section 11 (1)(e) to the Minister**	• The Bill could be amended to require that that an order under section 11(1)(e) may only be made by the Minister (and not by the Director-General of Health).
Option 3 **Narrow the circumstances in which orders may be made under section 11(1)(e)**	• The Bill could be amended to add a prerequisite relating to demand, for making an order under section 11(1)(e), raising the threshold at which such an order could be made. For example, the Bill could specify that an order made under section 11(1)(e) could only be made if person making the order is satisfied that the demand for laboratory supplies and/ or testing capacity to support the public health response to COVID-19 exceeds, or will imminently exceed, the contracted testing capacity available to the Crown.
Option 4 **Limit the duration of orders made under section 11(1)(e)**	• The Bill could be amended to impose a maximum duration on orders made under section 11(1)(e).

3.9: Impacts on businesses of powers relating to testing laboratories

Have any potential unintended consequences for private businesses of powers to make orders to requisition testing consumables been identified

Officials have considered the impacts of the new provisions in section 11(1)(e) on private businesses. These are likely to be primarily felt only if the requisitioning powers are actually exercised.

Officials consider that the compensation provisions within the Bill are sufficient to address this issue.

The compensation provisions in the Bill put testing laboratories in a unique position – no other parties affected by a COVID-19 order are legally entitled to compensation or payment from the Crown for the exercise of powers under the Act.

The Bill does not compensate businesses or individuals for the existence of powers but does provide support if those powers are actually used. All businesses face regulatory risk, and officials do not consider that it would be appropriate generally to compensate testing laboratories (or businesses generally) for that risk.

3.10: Management of Police checkpoints during restricted movement

Would the people listed in proposed subsection 22(6)(b) be required to be "suitably trained and qualified" and "employed or engaged by the Crown or a Crown entity" as per section 18, or are these attributes intended to be modified by proposed subsection 22(7)?

Clause 12 of the Bill amends section 22 of the Act, relating to the power to close roads and public places and stop vehicles. The proposed subsection 22(5) provides enforcement officers (who are part of the specified classes in the proposed amendment) with the power to stop a vehicle at a road block or checkpoint.

These enforcement officers must be authorised in accordance with section 18 of the Act. Those specified classes of enforcement officers (at proposed new section 22(6)) may only exercise that power if they have been authorised as enforcement officers.

The Commissioner of Police has a delegation from the Director-General of Health to authorise enforcement officers to assist Police with enforcement of COVID-19 orders that restrict movement. The delegation includes the requirement that those authorised must be suitably trained and qualified persons, or a class of persons, who are employed or engaged by the Crown.

It is not intended that these attributes will be modified by proposed subsection 22(7). For the class of persons specified, members of the Armed Forces are already considered employees of the Crown. However, for Māori Wardens, Pasifika Wardens, community patrollers and nominated representatives of iwi organisation, they will be *engaged* by the Crown, represented by a letter of authorisation from the Commissioner of Police at the conclusion of the authorisation process.

The class of persons listed in 22(6)(b) can nominate themselves, or be nominated by the class of persons listed, to be considered as an enforcement officer. Individuals nominated will be required to go through a robust selection and appointment process. This includes an assessment, police vet and a requirement to successfully complete enforcement officer training before they can be recommended for authorisation by the Commissioner of Police.

Part 4: Additional recommendations from officials for amendments to the Bill

Officials have a number of recommendations that are not directly connected with submissions on the Bill. These are technical in nature and intended to ensure the smooth administration of the Act. They are set out in the following tables.

Table 4: New content recommended by officials

Issue	Recommendation
Concerns have been raised by stakeholders that the existing legislative protections of data collected for COVID-19 contact tracing purposes, such as QR codes or paper-based attendance records, are insufficient. In particular, stakeholders are concerned that the current situation could enable: • Police and government agencies with enforcement powers to use contact tracing data for investigatory or enforcement purposes • Private sector agencies to use contact tracing data for marketing purposes • Employers to use contact tracing data for purposes other than health and safety, and • Individuals to use contact tracing data coercively against other individuals Officials consider that the concerns above are mitigated by a range of existing legal protections including: • The Privacy Act (information may only be used for the purpose for which it was obtained, with some exceptions)	It is recommended the Committee agree to include a provision in the Bill to confirm that all information created or provided by members of the public through QR scans and paper-based forms for contact tracing purposes cannot be used by any person or organisation for any other purpose.

Issue	Recommendation
• The Judicial Review Procedure Act 2016 (the Court may supervise the Government's decision making to ensure decisions are not made in an unlawful or procedurally improper way) • NZBORA (claims may be brought against the Government if certain rights are breached, including those against unreasonable search and seizure or affirming freedom of expression) • Search and Surveillance Act 2012 (setting out legal requirements of surveillance of individuals, and • The Evidence Act 2006 (providing restrictions on the use to which evidence can be put if obtained unfairly or contrary to recognised privileges) However, we recognise that the above mosaic of general law powers is not transparent or accessible. We want to increase certainty for the public and ensure that the public health benefits of contact tracing are not undermined by a lack of trust around what the data will, and will not, be used for. Accordingly, we recommend a new obligation be included in the Act to clarify the privacy of contact tracing data.	

Table 5: Technical amendments recommended by officials

Clause	Issue	Recommendation
clause 7 **section 11 amended (Orders that can be made under this Act)**	Orders may be needed to focus on avoiding and mitigating potential adverse effects of COVID-19, rather than only preventing outbreak or spread. This has been reflected in the addition of "containing, reducing, controlling, managing, eliminating, or limiting the risk of outbreak or spread of COVID-19" but the legal basis could be further strengthened. Accordingly, it is recommended that section 11 reflects that orders can be made to avoid, mitigate, or remedy the actual or potential adverse public health effects of the COVID-19 outbreak.	It is recommended that a further amendment is made to section 11 to enable COVID-19 orders to be made to avoid, mitigate, or remedy the actual or potential adverse public health effects of the COVID-19 outbreak.
clause 7 **new section 11(1)(b)**	This provision empowers orders to be made that restrict movement in MIQFs and "other places of isolation or quarantine" (defined in cl 5(2), new s 5(1)). This is not broad enough to capture movement restrictions that may need to be applied to any self-isolation.	We recommend broadening the provision so that it applies to places of self-isolation.

Clause	Issue	Recommendation
clause 12 **section 22 amended (Power to close roads and public places and stop vehicles)**	This power only applies to vehicles, but refers to an order that restricts movement of both people and vehicles. This means there would be a gap in the legislation that would allow a person to leave their vehicle and walk through the check point.	**NZ Police** recommend that the provision be broadened to allow for the stopping of vehicles or persons.
clause 22 **new section 32P(2)**	This provision puts a requirement on people leaving their MIQF or other place of isolation or quarantine to comply with any conditions imposed by the chief executive. This requirement is not currently an infringement offence or, where it is intentional, a criminal offence.	We recommend that failure to comply with a condition or direction in 32P(2) is an infringement offence under 32P(6) and a criminal offence under 32P(5).
clause 22 **new section 32P(4)**	This provision talks about "whether to restrict a person to their room …" This makes 32P(3) appear as if it applies much more broadly by restricting any movement out of rooms. The chief executive can only choose to not exercise the authorisation of additional activities out of rooms (e.g. fresh air). This does not extend to preventing access out of rooms for the other reasons set out in 32P(1)(b) – (g).	We recommend clarifying that 32P(4) applies to the chief executive's decision in 32P(3) only.
clause 22 **new section 32P(5)(b)(ii)**	This provision sets the penalty for body corporates in relation to movement restrictions in MIQFs. However, only individuals can be in MIQFs.	We recommend deleting s 32P(5)(b)(ii).
clause 22 **new section 32T Persons in respect of whom charges are payable to provide contact details**	This power requires people staying in MIQFs to provide their contact details to support invoicing. This does not capture situations like for critical workers where their employers can be liable for the charges rather than the individual.	We recommend making it clear that the person in respect of whom charges are payable (the individual) must provide the details of the persons liable for the charges (whether that is the individual or their supporting agency/employer). The infringement offence will continue to attach to the individual re providing and updating that information.

Clause	Issue	Recommendation
New section	Consequential changes to the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020, the COVID-19 Public Health Response (Air Border) Order (No 2) and the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 are required to align them with changes made in the Bill. These changes include: • Amending the definition of chief executive to match the Bill • Deleting the provisions in the orders about MIQ allocations and movement restrictions that the Bill has shifted into the Act • Updating cross references throughout to refer to the Act as necessary.	We recommend instructing the Parliamentary Counsel Office to make these consequential changes and any others that are required to align with the Bill.
Minor and technical changes	The recommended amendments to the Bill are subject to PCO advice concerning how best to express each recommendation in the legislation.	We recommend that the Committee agree that PCO may also include in the revision-tracked version of the Bill any minor or technical amendments that PCO advises should be made.

Appendix One: Summary of suggested amendments from submitters

This clause-by-clause analysis covers suggested amendments made in relation to specific clauses which provide more detail than has been provided in the thematic analysis in Part 2. If suggested amendments are covered in Part 2, they are not repeated.

Table 6: Summary of submissions' suggested amendments

Clause	***Summary of change***	**Name of submitter**	**Suggested amendment**	**Departmental response**
7	*Extension of the purposes for which section 11 orders may be made*	Marleen Rentoul	Redraft section 11(1)(a) to replace the substantive purpose with, "*to do with diagnosing Covid-19.*"	**Disagree.** The policy intent of the Bill is 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. The purpose of the Act is to support a public health response that: • prevents, and limits the risk of outbreak or spread of COVID-19, • mitigates potential adverse effects of COVID-19, • is co-ordinated, orderly and proportionate, • allows social and economic factors to be taken into account (where relevant), • is economically sustainable, and

				• has enforceable measures. Replacing the purposes for which section 11 orders may be made with "to do with diagnosing COVID-19" would not achieve the policy intent of the Bill, or the purpose of the Act, as it would significantly limit the scope of COVID-19 orders which could be made. If this recommendation was incorporated, it would be unlikely that COVID-19 orders could be made to give effect to any public health measures recommended by public health experts.
7	*Empowering provisions to make COVID-19 orders*	Scott Reynolds, Inger Spooner	Remove the word "elimination" from section 11(1)(a).	**Disagree.** The policy intent of the Bill gives the flexibility to implement the Government's strategy for managing COVID-19 as the virus and the response evolves. At this time, elimination remains an important feature of that strategy.
7	*Empowering provisions to make COVID-19 orders*	Andrew McMillan	Redraft section 11(1)(a) to read, "*to require persons to refrain from taking any specified actions that [**in the Ministers mind**] are likely to contribute to the risk of the spread of COVID-19, or require persons to take any specified actions, that [**in the Ministers mind**] are likely to contribute to limiting the risk of spread of COVID-19, without limitation*."	**Disagree.** Section 11(1)(a) is introduced by reference to the Minister and the Director-General of Health. As such, this is already implied by the structure of section 11.
7	*Empowering provisions to make COVID-19 orders*	Sarah Holderness	If the intention is to mandate vaccination, add a provision into section 11 that explicitly states that vaccination can be mandated.	**Noted.** It is currently within the scope of section 11 to create COVID-19 orders that mandate vaccination.

				This has recently been tested in the courts (see *GF* v *Minister of COVID-19 Response* [2021] NZHC 2526) and the COVID-19 Public Health Response (Vaccinations) Order 2021 was **not** found to be ultra vires. Officials do not deem it necessary to be explicit, but not do disagree with doing so.
7	*Empowering provision to make COVID-19 orders*	Six submitters (Shelby Young, Daniel Peacock, Arno van Niekerk, Kerry McCutcheon, Andrew Peacock, Stephen Peacock)	Explicitly state that vaccination **cannot** be mandated under section 11.	**Disagree.** Vaccination is one of the most important public health measures available to help combat COVID-19. It is important that the Government can support organisations and businesses whose staff are at a higher risk of being infected with COVID-19 to require vaccination of their staff. This provides a strong legal basis for those organisations to redeploy or terminate staff who refuse to be vaccinated and pose a risk to others in doing so. COVID-19 orders which mandate vaccination also provide New Zealand with an extra layer of protection. Any mandatory vaccination provision within a COVID-19 order must be a justified limitation on the rights and freedoms under the NZBORA.
7	*Empowering provision to make COVID-19 orders*	Seven submitters (Stacey Baker, Peter Juriss, Kim Fenn, Elizabeth Parker, I Roberts, Shirley	Remove "without limitation" from the amendment to section 11(1)(a).	**Disagree. "**Without limitation" is to ensure that a wide interpretation can be taken to the empowering provision so that the Act continues to be flexible and fit for purpose.

		Bisschoff, Darryn Keiller)		
7	*Empowering provision to make COVID-19 orders*	Daryll Pinfold	Remove "likely to contribute" from section 11(1)(a).	**Disagree.** Including "likely to contribute" in the chapeau of section 11 that establishes the purpose for which COVID-19 orders may be made is important to allow COVID-19 orders to be made to pre-empt outbreaks of COVID-19, and suppress the virus, rather than only take reactionary measures.
7	*Empowering provision to make COVID-19 orders*	Daryll Pinfold	Limit section 11(1)(a)(viii) (empowering provision for mandatory testing) to only require testing if it is for the purpose of determining whether someone is infectious.	**Disagree.** To date, all COVID-19 orders made under section 11(1)(a)(viii) have been for the purpose of determining whether someone has COVID-19. It is likely that if this power was not used for this purpose, the COVID-19 order would not be consistent with the NZBORA. Therefore, this change is unnecessary and may create confusion.
7	*Empowering provision to make COVID-19 orders – laboratory management*	New Zealand Scientific Officers Association	Remove section 11(1)(d)(i) and rely on quality control measures and minimum standards to be under the purview of the Health Quality and Safety Commission.	**Disagree.** While the Health Quality and Safety Commission performs an important role, additional regulatory controls are appropriate in the context of COVID-19. Enabling COVID-19 orders to be made setting quality control measures and minimum standards also allow enforcement of those standards.
7	*Empowering provision to make COVID-19 orders – laboratory management*	Roger Gower	Indemnify laboratories against breach of contract situations would could result from government overtaking lab testing capacity.	**Disagree.** Officials do not consider that it is appropriate to indemnify testing laboratories against breaches of contract arising from the exercise of powers under section 11 of the Act. There are many other circumstances where the exercise of these powers may limit the capacity

				of one or more parties to a contract to meet their obligations, but the Act does not indemnify these other businesses.
9	*General provisions relating to COVID-19 orders*	Dave Stewart	Remove "court registry" from section 12(2)(c) so that public areas of the courts and Parliament must comply with alert level requirements.	**Noted.** COVID-19 orders are not intended to apply to the Parliament precinct or facilities of the courts. It is the responsibility of the Speaker (with respect to the Parliamentary precinct) and the judiciary with respect to the courts to make appropriate rules for the management of these spaces. In practice, the Ministry of Health provides assistance and advice to these decision makers about how to manage the public health risks.
9	*General provisions relating to COVID-19 orders*	Jason Wild	Section 12(2)(a) should be amended to require any COVID-19 orders made by the Director-General to be approved by an independent body (like the court system or an independent sub-committee).	**Disagree.** The power for the Director-General to make COVID-19 orders is limited to urgent circumstances. Therefore, it is impractical to require independent approval of these orders. Officials are satisfied that the safeguards that apply to COVID-19 orders as set out in Table 1 at Part 2.3: in the main body of this report are sufficient.
12	*Power for enforcement officers to stop vehicles*	Jason Godfrey	Remove new section 22(6)(b)(iv) (community patroller).	**Disagree.** Community patrollers consistently work in partnership with Police. They receive regular Police guidance, training and tasking that provides transferable skills for assisting with roadblocks in the capacity of an enforcement officer. Community patrollers are volunteers from the local community that exemplify a high level of responsibility and have

				local knowledge and understanding that this amendment is seeking to utilise.
12	*Power for enforcement officers to stop vehicles*	Laurie Brown	Explicitly state that no force may be taken by Police or any enforcement officers for non-compliance.	**Disagree.** Police have general powers to use force where necessary in a variety of situations. At checkpoints, if non-compliant behaviour escalates and becomes a risk to the health and safety of others, Police may require force to intervene. Enforcement officers are not granted any powers to use force under the Act, and therefore this does not need to be explicitly stated. If powers to use force are required, a supervising constable will intervene.
12	*Power for enforcement officers to stop vehicles*	Te Rūnanga o Ngāti Whātua	Amend new section 22(6)(b)(ii) from "a nominated representative of an iwi organisation" to "a nominated representative of a mana whenua, mātāwaka or taurahere organisation" to include non-iwi organisations.	**Noted.** This would be a substantive policy change so is not pursued at this point.
13	*Increased penalties*	Haden Hansen	Double the penalty amounts.	**Disagree.** This would amount to substantial penalties, particularly given that the penalties have already been substantially increased. Further increasing the penalties is unlikely to be proportionate to the risk.
13	*Increased penalties*	Michele Cavanagh	Imprisonment should be replaced with home detention for a term not exceeding three months.	**Disagree.** The term of imprisonment is consistent with that currently in the Act and the Health Act 1956. Given the potential for significant impact and harm by an intentional breach, it is prudent to allow a Judge to determine the most appropriate case-specific penalty within the limits set out in the Act.

13	*Increased penalties*	Michele Cavanagh	Change the maximum penalties for offences to $2000 for individual and $5000 for others.	**Disagree.** Refer to discussion in Part 0for rationale on why higher fees are suitable in this context.
13	*Increased penalties*	Michele Cavanagh	Change the infringement offences to $1000 for individuals and $5000 for others.	**Disagree.** Refer to discussion in Part 0for rationale on why higher fees are suitable in this context.
13	*Increased penalties*	Multiple submitters	Current penalties should be retained.	**Disagree.** The current penalties are not high enough to be a deterrent considering the grave consequences an outbreak can have for New Zealand. It is important the penalties are proportionate to the risk. Refer to discussion in Part 0for rationale on why higher fees are suitable in this context.
13	*Increased penalties*	Alastair Neal	A defined list of behaviours that are offences should be included in the Bill.	**Disagree.** As the Act empowers COVID-19 orders to be made, which specify the activities that amount to offences, this would not work with the legislative design of the COVID-19 legal framework. The Unite Against COVID-19 website provides accessible information on current requirements contained in orders.
13	*Increased penalties*	Nathan Hockly	Infringements should reflect the severity of the behaviour demonstrated.	**Noted.** Regulations are being made in a concurrent process to the Bill to establish different fees and fines for different behaviours.
22	*Management of MIQ allocations (32J – 32O)*	Chief Ombudsman	Noted that he is unable to directly inquire into or make recommendations about the acts or omissions of a Minister of the Crown. This means there is no independent oversight of Ministerial decisions in relation to the managed isolation allocation system aside from judicial review. He notes that the Ministerial decisions	Refer to discussion Part 2.10:

			set out in these provisions could have a significant impact on people's rights and interests. Consider whether some form of oversight of Ministerial decision making, whether by Parliament or otherwise, should be included in this Bill.	
22	*Restrictions on movement within MIQFs and other places of isolation and quarantine (32P)*	Chief Ombudsman	Consider whether the Bill should more clearly provide, as a minimum for all persons, access to time outside their room for fresh air each day. The Ombudsman also comments that consideration should be given to recognising the mental and physical impact of room restrictions on people, a more tailored approach for individual circumstances, clearer exemptions, and better communications.	Refer to discussion in Part 2.9:
22	*Restrictions on movement within MIQFs and other places of isolation and quarantine (32P)*	Te Ropu Whakakaupapa Uruta	TRWU has concerns about the extended powers of the chief executive of the agency responsible for MIQ, which is currently MBIE, including that primary responsibility for MIQs is outside of health. The CE has powers to make decisions about people's stays in MIQ, including whether they can leave their rooms, and how the MIQ is run. Given that the pandemic is a public health issue, it is critical that these decisions are informed by critical and equitable public health approaches.	**Noted.** Section 32P(3) requires the Chief Executive to consult with the Director-General of Health before choosing not to authorise their power to restrict someone to their room. In addition, any restrictions must be justified under NZBORA.
22	*Restrictions on movement within MIQFs and other places of isolation*	Te Runanga o Ngati Whatua	Recommend making sure that there is culturally appropriate mental health support within MIQFs	Refer to discussion above at Part 3.2:

	and quarantine (32P)		including Māori and Pacific helplines and online platforms	
22	*Restrictions on movement within MIQFs and other places of isolation and quarantine (32P)*	Maori Public Health	The Bill should be futureproofed to better reflect alternative models of isolation and quarantine, such as self-isolation.	**Noted.** The Act is generally enabling and so detail largely occurs within the Orders. This is where detail on MIQ currently occurs and will be the same for self-isolation. Where changes have been made in the Bill, we have endeavoured to provide flexibility.
22	*Chief executive may make rules (32Q)*	Jenna H	MIQ should only be able to hold weapons.	**Disagree.** There are a range of behaviours or items that could limit MIQ's ability to fulfil its role in the public health response. For example, a fire in a room could trigger the evacuation of a facility, thereby risking the spread of COVID-19 either within the facility or into the community.
22	*Chief executive may make rules (32Q)*	Simon Smith	Explicitly exclude private residences (homes) from the definition of a MIQF so that section 32R(1) does not allow the CE of MBIE to seize things prohibited under 32Q.	**Disagree.** Under s5 (Interpretation) of the Act, MIQFs must be a "facility". This already therefore excludes private residences.
22	*Chief executive may make rules (32Q)*	Dave Stewart	Amend Section 32R to require any lawful item seized to be returned to the resident at the end of their stay and unlawful items referred to Police. Recommend screening people using xray and metal detectors when entering MIQF rather than power to search. Add a power of detention.	**Disagree.** Section 32R(3) already provides that items can only be held until the end of their stay. There is no power of physical 'search' within the Act or the Bill. People within MIQ are already subject to a civil detention regime. There are mechanisms to escalate to police where people demonstrate an unwillingness to comply; this is subject to the

				appropriate safeguards of existing legislation and the courts.
22	*Chief executive may make rules (32Q)*	Ricky Harris	This clause needs clarification on what items are allowed. It is not fair to leave it to the discretion of the MIQ chief and should be defined. It is understandable to ban illegal substances and alcohol. But electronic devices like laptops or phones is unspecified. Under these laws any excuse can be used to ban whatever the chief decides.	**Disagree**. Refer to Part 2.8: .
22	*Chief executive may make rules (32Q)*	Aisha McManus	Does not think the chief executive should have public health powers. NZBORA concerns about rules and considers rights are absolute. Recommends that a Ministerial committee and iwi chair forum with MIQFs based in their rohe should oversee any rules made by the chief executive.	**Noted**. The power to make rules is not intended to be a direct public health power. It is intended to capture the detailed rules that go to the day-to-day operation of facilities and that when they are not complied with affect the ability for MBIE to deliver its overall public health purpose. The chief executive is the appropriate decision maker and will take into account public health advice **Disagree** that the legislation should formally require oversight of rules by these groups. MIQ has established relationships with iwi who have MIQFs in their rohe and meet regularly. The rules will be tested with these groups as they are developed.
22	*Chief executive may make rules (32Q)*	Philip Creed	The power to make rules should be narrower in scope.	**Disagree**. Refer to Part 2.8: .
22	*Chief executive may make rules (32Q)*	Becky Steel	The 32Q(2) wording should be changed to "the chief executive must be held accountable to the	**Disagree.** The test under NZBORA is not absolute but allows for justified restrictions on those rights. The chief executive is accountable

			assurance that rules imposed do not limit the rights and freedoms of the NZBORA 1990"	for their decisions through judicial review processes.
22	*Complaints process relating to management of MIQFs (32S)*	Ricky Harris	This does not go far enough to protect the rights of New Zealand citizens who have injustices inflicted on them due to mismanagement conducted at MIQ … let's see accountability measures made in the form of penalties to protect the people in MIQ from those who mismanage or abuse their powers while governing the people in their care.	**Noted**. The accountability of workers in MIQFs is provided through employment and contractual mechanisms. Government operation of MIQ is accountable through judicial review, Parliamentary oversight and the complaints process required in s 32S. Refer to Part 2.11: re complaints process.
22	*Complaints process relating to management of MIQFs (32S)*	Gael McDonald	There should be a more robust appeals process in light of the propensity for human rights violations.	**Disagree** that an additional independent complaints body should be established or more detail of the complaints process should be set in primary legislation. See Part 2.11: Judicial review, the Ombudsman and Privacy Commissioner are independent bodies with oversight of MIQFs.
22	*Complaints process relating to management of MIQFs (32S)*	Aisha McManus	Not an impartial complaints process. Ministerial Committee and Iwi Chair forum groups with MIQ in their rohe should oversee complaints process, establishing the process and its outcomes/responses for the complainant.	**Disagree** that an additional independent complaints body should be established. Part 2.11: MBIE has established relationships and meets regularly with iwi who have MIQFs in their rohe to discuss and address concerns.
22	*Complaints process relating to management of MIQFs (32S)*	Maori Public Health	Rigorous processes which gratify action in response to complaints re bias, discrimination and health and safety. Adopt a Human Rights approach to ensure MIQ residents rights protected during residency at MIQ.	**Noted**. MBIE's internal complaints process is available online. Refer to comments in Part 2.11: re NZBORA considerations and the safeguards that apply.

22	*Complaints process relating to management of MIQFs (32S)*	Te Ropu Whakakaupapa Uruta	Human rights need to be respected and upheld in the operation of MIQFs. We support having a complaints system. However, it would be preferable that there was also independent oversight of the complaints system, as well as an Ombudsman that could investigate complaints and monitor the human rights of people in MIQs.	**Noted.** The Ombudsman can investigate actions and omissions of public service departments under the Omudsmen Act 1975. The Ombudsman also monitors MIQFs as the National Preventative Mechanism under the Crimes of Torture Act 1989. **Disagree** that an additional independent complaints body should be established. See Part 2.11:
22	*Information collection to support MIQ charges (32T)*	Philip Creed	Require only one of the forms of contact info in 32T as some people don't have email	**Disagree**. The requirement is to provide an email address at which they can be contacted. For people who do not have an email themselves, this can be an email address of a person whom we can contact on their behalf such as a family member.
22	*Information collection to support MIQ charges (32T)*	Te Ropu Whakakaupapa Uruta	It is important that there are strict controls over who has access to data, how data are shared, how data are stored and when data are deleted. Māori data should be collected, stored and used in line with principles of Māori Data Sovereignty.	**Noted**. MBIE will continue to manage personal information collected for MIQ Purposes in accordance with the Privacy Act 2020 and Public Records Act 2005. MBIE is further progressing work to embed the Māori Data Sovereignty principles, which reflect the inherent rights and interests of Māori in relation to Māori Data, in its handling of data in MIQ.