

## Guidelines for Assessing a Waiver of Charges

### Under the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020

#### Status of these guidelines

These guidelines set out matters to be taken into account in considering applications for waiver of charges under the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 (Regulations). They do not take precedence over the Regulations, and if there is any inconsistency, the Regulations take precedence. These guidelines will be updated from time to time.

Any reference to the Chief Executive or “we” is to the Chief Executive of MBIE or her delegate(s).

#### Introduction

1. The COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 (the Regulations) provide that specified persons<sup>1</sup> who stay in a managed isolation or quarantine facility (MIQF) must pay the charges relating to the costs of their stay in the MIQF.
2. However, the Chief Executive of the Ministry of Business, Innovation and Employment (the Chief Executive) may waive, in whole or in part, the charges payable under the Regulations where the payment would cause the person undue financial hardship, or if other special circumstances justify a waiver.
3. Applications for a waiver of these charges should be made in writing on the “Managed Isolation and Quarantine Fee and Waiver Form” available on the MIQ website<sup>2</sup>. If an application is received which is not on this form, it will be accepted if it contains all the required information.
4. This statement offers guidance on how the Chief Executive or her delegate will consider an application to waive the MIQF charges.
5. The Chief Executive will take particular care and adopt an empathetic approach, while taking into account that the charges that would otherwise be recovered are intended to cover part of the cost of providing MIQF, and that others staying in MIQF are paying these charges, and that others have chosen not to travel taking the charges into account.

#### Who can apply for a waiver

6. Any person who is liable for charges can apply for a waiver except an ‘other critical worker’ entering New Zealand on or after 1 January 2021.

#### When people can apply for a waiver

<sup>1</sup> See [www.miq.govt.nz](http://www.miq.govt.nz) and [COVID-19 Public Health Response \(Managed Isolation and Quarantine Charges\) Regulations 2020](#) for information about who needs to pay.

<sup>2</sup> See [Charges for Managed Isolation](#)

7. A person can apply for a waiver before they travel to New Zealand, while they are in a MIQF, or after they have left a MIQF.

## Timeliness of decision-making

8. Decisions will be made in a reasonable timeframe from when all required information is received.

## Undue financial hardship

9. The Chief Executive may waive, in whole or in part, the payment of the charges, if the Chief Executive considers payment of the MIQF charges would cause the person undue financial hardship.
10. The Chief Executive will consider all applications under this ground on a case by case basis, taking into account the particular circumstances of each application
11. “**Undue** financial hardship” is not defined in the Regulations, however, “undue financial hardship” is considered to be financial hardship which is unwarranted or inappropriate because it is excessive or disproportionate considering all relevant factors. Whether financial hardship is “undue” may include considering the person’s reason for travel (Reg 9(2)(e)). The Chief Executive may also consider any other relevant factors and the wider public policy behind the charging regime.

## Undue financial hardship vs. financial hardship

12. The threshold of ‘undue’ financial hardship was included in the Regulations to differentiate from the power of the Chief Executive to allow payment by instalment, which only requires ‘financial hardship’. “Financial hardship” may (without limitation) include a situation where a person may not be able to pay the charges in a single payment within by the due date set out in the invoice. In considering an application on “undue financial hardship” grounds, the Chief Executive will consider both whether payment would cause financial hardship AND whether any financial hardship is undue. An application for a waiver on undue financial hardship grounds will only be granted where the Chief Executive considers that payment of the charges would cause financial hardship AND that financial hardship is undue.
13. If payment of the charges would or may cause financial hardship (assessed in accordance with paragraphs 15 to 21), that financial hardship may not be considered **undue** if it arises where a person travels in the following situations (without limitation):
  - the person is entering New Zealand on a border exception as a critical health worker or other critical worker<sup>3</sup>. For these people, the employer has usually agreed to pay the charges. Where an employer has not agreed to pay the charges, or the person does not have an employer, the charges may be considered a cost of immigrating, and even if there is financial hardship at the date of travel, the person can expect to obtain employment in New Zealand (deferment or instalments may be appropriate in this situation)
  - the person is entering New Zealand on a temporary visa (e.g. to join a family member), or has travelled to accompany a family member/partner back to New Zealand. The charges may be considered a cost of immigrating/visiting.

<sup>3</sup> An other critical worker entering New Zealand from 1 January 2021 is not able to apply for a waiver (refer Regulations 9(3) and 10(3) of the Regulations.

- the travel is for lifestyle, leisure, or celebratory reasons (e.g. sport, a holiday, returning from study overseas or travelling to New Zealand to study, religious pilgrimage, voluntary work, retaining rights to live in another country, or visiting family (including for the birth of child), or attending a wedding or other celebration)
  - the time of travel is not time sensitive and/or could reasonably be delayed until after the pandemic or until a relevant quarantine free travel zone is established
14. If payment of the charges would or may cause financial hardship, that financial hardship may be considered **undue** if it arises where a person travels in the following situations (without limitation):
- The person is travelling to retain a right to work (for example a visa) where losing employment would result in more financial hardship. We will require evidence that they are not able to apply in the country they are living in.
  - The person is returning to New Zealand to live where the person has unexpectedly lost employment due to COVID-19 and does not have reasonable options for employment in the country where they have been living
  - The person is studying overseas and their learning institution closes unexpectedly due to COVID-19 and they have no accommodation and no right to work in that country so return to New Zealand (but not where they have travelled to study during the pandemic where the risks of closure were known)
  - The person has significant health (including mental health) issues and there is evidence that travel to or from New Zealand is required to alleviate their health issues and there is no reasonable alternative
  - The person is travelling to support a close family member who is in need of care from the person because of bereavement, medical condition, age and/or disability (or a combination of these factors)
  - The person is travelling to leave a domestic violence situation, or to support a family member who is leaving a domestic violence situation
  - The person's financial situation has unexpectedly and significantly worsened during or soon after their travel (for example being made redundant or another unforeseen financial setback during their travel)

## Financial hardship

15. In considering whether to grant a person a waiver on the grounds of undue financial hardship, the Chief Executive may take into account (without limitation) the following to determine if payment would cause financial hardship:
- (a) the person's income:
  - (b) the person's current outgoings (for example, mortgage or loan repayments):
  - (c) the person's assets:
  - (d) the person's liabilities
  - (e) the person's reasons for travel.

16. A person will not be granted a waiver on undue financial hardship grounds where the person has insurance that will cover the charges.
17. The Chief Executive may consider that payment of the MIQ charges would cause a person financial hardship if payment would mean they would be unable to meet their minimum living expenses, using normal community standards of cost of living.
18. The Chief Executive may, if she considers it is appropriate, take into account a person's minimum living expenses, and may have regard to the actual or reasonable costs of living expenses in the person's area<sup>4</sup>, these costs could include for instance:
- Food and groceries;
  - Accommodation, such as rent, mortgage repayments and rates
  - Utility services, such as power, gas, and telecommunication services
  - Transportation, such as cost of public transport and private vehicle costs
  - Clothing and footwear;
  - House and contents insurance;
  - Property maintenance;
  - Medical, life or other insurances;
  - Health and medical expenses;
  - Education for dependents;
19. However, in calculating the person's minimum living expenses, the Chief Executive may decide not to take into account the person's ability to maintain entertainment, their social activities, the cost or upkeep of luxury items or holidays or similar outgoings which are in excess of community norms.
20. The Chief Executive may also take into account assets held by an applicant in determining financial hardship, whether those assets are cash or other assets (noting that for applicants under 65 Superannuation & Kiwisaver are not able to be accessed in usual circumstances).
21. The Chief Executive may take into account the applicant's household financial position where that is appropriate, for example where other members of the household are travelling with the applicant and/or the household financial position most accurately reflects the applicant's financial position.

### **Options for relief due to undue financial hardship**

22. If the Chief Executive considers that the payment of charges would cause the person undue financial hardship, the Chief Executive may:
- (a) waive the payment of the charges in full; or
  - (b) waive the payment of the charges in part.
23. If the Chief Executive considers that the payment of charges would not cause the person undue financial hardship, the Chief Executive may still consider whether to allow payments by instalment where the charges would cause financial hardship (see below).

### **Options for relief due to financial hardship**

<sup>4</sup> [IRD Household Expenditure Guide](#) provides guidance for New Zealand household expenditure.

24. If the Chief Executive considers that the payment of charges in one amount would cause a person financial hardship, the Chief Executive may allow the person to pay the charges by specified instalments over a specified period.
25. In considering whether to allow a person to pay the charges by instalments because financial hardship would otherwise result, the Chief Executive will take into account the relevant factors set out in the “Financial Hardship” section above. The consideration of financial hardship in this instance may (without limitation) reflect a situation where a person is able to financially afford the fee, but is not be able to pay the fees in one payment within 90 days.

### **Deferment of payment**

26. The Chief Executive may agree to defer the time for payment if the Chief Executive considers that a deferment is appropriate in the circumstances.
27. In considering whether to defer the time for payment the Chief Executive will take into account all relevant information, including any relevant factors set out in the “Financial Hardship” section above.

### **Combination**

28. The Chief Executive may agree to a combination of part waivers, deferrals and payment by instalments, as appropriate, if the relevant standard is met for each payment option.

### **Special Circumstances**

29. The Chief Executive may also waive, in whole or in part, the payment of charges if she is satisfied that a waiver is justified by special circumstances.
30. The Regulations set out three examples of special circumstances, however, “special circumstances” is not defined in the Regulations. The Chief Executive has broad discretion to consider the range of special circumstances that may justify a waiver. The Chief Executive will consider all applications under this ground on a case by case basis, taking into account the particular circumstances of each application.
31. The following special circumstances may justify a waiver, without limitation:
  - where a person described in Regulation 6(2)(a) has left New Zealand for the purposes of accompanying back to New Zealand an excepted person who has a condition or disability that means they are unable to travel alone;
  - where a person has travelled to visit a close relative who is seriously ill or dying or to attend a funeral or tangihanga (whether in New Zealand or overseas)
  - where a person has travelled to New Zealand, or returned to New Zealand having travelled overseas, for the purposes of obtaining medical treatment.

### **Accompanying a person**

32. If an applicant has left New Zealand for the purposes of accompanying back to New Zealand an excepted person (i.e. exempt or not liable for charges) and the excepted person has a condition or disability that means they are unable to travel alone, the applicant will need to:
  - establish that they are a person described in Regulation 6(2)(a)

- establish that the person they are accompanying is an excepted person; and
- provide evidence of the condition or disability. This evidence could include written information from a treating medical practitioner/hospital.

33. If the applicant who is accompanying the person back to New Zealand is a family member (as defined in the Regulations i.e. a spouse, partner, guardian or child younger than 18) of that person and sharing a room in the MIQF, that person will be exempt from fees (reg 8(a)(i)). In this case an application for a waiver is not required.

### **Travelling for medical treatment**

34. If the applicant has travelled to New Zealand, or returned to New Zealand having travelled overseas, for the purposes of obtaining medical treatment, the Chief Executive may consider:

- (a) can the treatment reasonably be delayed, taking into account the medical, emotional, financial and any other associated cost to the person?
- (b) is the medical treatment elective or urgent?
- (c) is it necessary to have the treatment in New Zealand or overseas (whichever is applicable)?
- (d) is the treatment available in New Zealand or the country they travelled from (whichever is applicable)?

35. The applicant will need to provide evidence of the medical treatment. This could include written information from a treating medical practitioner or hospital. If relevant, the applicant may need to provide evidence that the medical treatment is not available to them in New Zealand, or the country they travelled from (whichever is applicable).

36. Medical treatment is not defined in the Regulations. The Chief Executive may consider whether the treatment or procedure proposed is medical treatment by considering all relevant factors including whether a health practitioner<sup>5</sup> (or the equivalent if the treatment is outside New Zealand) is providing the treatment.

37. This waiver ground applies if the person is liable for a fee. Some people travelling for medical treatment may be exempt from the fee if they are travelling under the MFAT Medical Treatment Scheme (reg 8(c)) or the MOH High Cost Treatment Pool scheme (reg 8(d)), or who has entered New Zealand for medical treatment and is ordinarily resident in the Cook Islands, Niue or Tokelau (reg 8(e)).

### **Visiting seriously ill or dying close relative**

38. Where a person has travelled to visit a seriously ill or dying close relative (whether in New Zealand or overseas), we may consider whether this is the principal reason for their visit, and will consider whether they are a close relative of the person who is seriously ill or dying.

39. "Close relative" is not defined in the Regulations, however, the bereavement leave provisions of the Holidays Act 2003 provide a guide only for determining who is a close relative – spouse or partner, parent, child, brother or sister, grandparent, grandchild, spouse's or partner's parent. Another relative who is not listed here may still be considered a close relative in reg 10.

<sup>5</sup> As defined in the [Health Practitioners Competence Assurance Act 2003](#)

40. The applicant will be asked to provide written confirmation from a treating medical practitioner/hospital or hospice that the close relative is “seriously ill or dying” (reg 10(2)(b)), or that the close relative has a medical condition from which that can be inferred (e.g. terminal cancer). We do not require details of the condition if the medical practitioner confirms that the person is “seriously ill” or “dying” (or similar words with the same meaning). The written confirmation should clearly be from the medical practitioner (e.g. on DHB/hospice/GP letterhead or from a DHB/hospice/GP email address).
41. We may require evidence of the close relationship between the applicant and the person being visited (for example, birth certificates) and/or a statutory declaration confirming the relationship.

### Attending a funeral or tangihanga

42. Where a person has travelled to attend a funeral or tangihanga (whether in New Zealand or overseas), we may consider whether this is the principal reason for their visit.
43. The applicant has to provide evidence that the person has died, for example, a death notice in a newspaper, a death certificate, or a letter from a funeral director. The applicant may have to provide evidence that a funeral or tangihanga is taking or has taken place (e.g. a letter from a funeral director or marae, or evidence arrangements have been made such as venue bookings) and that they are attending or have attended the funeral or tangihanga.

### Other special circumstances

44. The Chief Executive will consider all applications for a waiver on the basis of special circumstances, but which do not fall into the examples given in reg 10(2), by considering all relevant factors including:
  - (a) whether it is similar to any of the examples in reg 10(2) for example:
    - a memorial service or unveiling which is similar to a funeral/tangihanga, where the person was unable to attend the funeral/tangihanga
    - travelling with a person in need of assistance where reg 10(2)(a) is not met – in this case, we will consider the reasons for travel of the person in need of assistance. For example, where a person who is not a New Zealand citizen or permanent resident needed assistance travelling to visit New Zealand, it may not justify a waiver if a family member then accompanies them home; and/or
  - (b) whether there are compassionate grounds which constitute special circumstances.
45. The following factors may support an application for waiver on the basis of special circumstances (without limitation):
  - the person is travelling to support or assist a close relative who is in need of care from the person because of bereavement, their medical condition, age, and/or disability (or a combination of these factors)
  - the person is travelling to visit a person who is seriously ill or dying but is not a close relative, in circumstances which constitute special circumstances on compassionate grounds
  - the person is travelling to New Zealand to leave a domestic violence situation, or travelling to or returning to New Zealand to support, or having supported, a family member to leave a domestic violence situation.

The following factors may not support an application for waiver on the basis of special circumstances (without limitation):

- the travel is for lifestyle, leisure, or celebratory reasons (e.g. sport, a holiday, returning from study overseas or travelling to New Zealand to study, religious pilgrimage, voluntary work, retaining rights to live in another country, or visiting family (including for the birth of child), or attending a wedding or other celebration); the time of travel is not time sensitive and/or could reasonably be delayed until after the pandemic or until a relevant quarantine free travel zone is established;
- the reason for the travel can be fulfilled without attending in-person;
- the person is employed outside New Zealand, and/or lives outside New Zealand and has family or other obligations in New Zealand. It is expected that this will require travel to and from New Zealand to fulfil obligations here (for example between work periods, and/or to visit close relatives including elderly parents, and children who do not live with the person full time);
- the travel was booked before MIQF charges were introduced or Regulations were amended;
- the travel was delayed due to COVID-related airline disruption until after MIQF charges were introduced;
- the person is entering New Zealand on a border exception as a critical worker or critical health worker. For these people, the employer has usually agreed to pay the charges. Where an employer has not agreed to pay the charges or the person does not have an employer, the charges may be considered a cost of immigrating;
- the person is entering New Zealand on a temporary visa (e.g. to join a family member), or has travelled to accompany a family member/partner back to New Zealand. The charges may be considered a cost of immigrating and, in the absence of any additional circumstances requiring consideration on compassionate grounds, the time of travel may be considered a lifestyle choice.
- the person is entering New Zealand in transit to a third country where there are alternative routes to the third country (e.g. travelling to Australia from or through a country with direct flights to Australia)
- the person is travelling to maintain a visa or other immigration status. This may be considered a lifestyle choice if the person has citizenship or residence of another country but chooses to live and/or work in another country.

### **Where waiver application includes tikanga Māori**

46. Where appropriate, the Chief Executive will take account of tikanga Māori when considering applications for waiver of charges.
47. If the Chief Executive considers expert advice about tikanga Māori is required to make a decision on an application for waiver, the applicant will be asked to nominate an advisor they believe should provide advice. If an applicant does not nominate an advisor, or additional information is required, the Chief Executive may seek advice from an appropriate advisor.

### **Where waiver application includes cultural or religious matters**

48. Where appropriate, the Chief Executive will take account of cultural or religious matters when considering applications for waiver of charges.



49. If the Chief Executive considers expert advice about a cultural or religious matter is required to make a decision on an application for waiver, the applicant will be asked to nominate an advisor they believe should provide advice. If an applicant does not nominate an advisor, or additional information is required, the Chief Executive may seek advice from an appropriate advisor.

### **When charges may be refunded**

50. In addition to waiving charges, the Chief Executive may refund, in whole or in part, charges paid by a person where it is considered that a refund is appropriate in the circumstances. A refund or part refund will generally be appropriate when payment has been made and:
- (a) An invoice was issued in error or for the wrong amount;
  - (b) The person was exempt from, or not liable for, the fee but was not aware or did not notify MBIE of their exempt/not liable status;
  - (c) The application for a waiver was approved after a payment was made; or
  - (d) A person's circumstances have changed and the person is now eligible for a waiver or is exempt.

### **Complaints about waiver applications**

51. If a person is dissatisfied with the decision made about a waiver application, or an application to pay by instalments or for deferment, the person may make a complaint to MBIE using the form available on the MIQ website. The complaint will be considered in accordance with any guidelines for management of complaints. If the person is still dissatisfied after the complaints process has been completed, the person may make a complaint to the Ombudsman. There is no barrier to the person making a complaint to the Ombudsman before they have made a complaint to MBIE.

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**Version control**

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