

1 August 2020

Hon Dr Megan Woods
Minister in charge of managed isolation and quarantine
Parliament Buildings
WELLINGTON

Tēnā koe Minister,

New Zealanders returning from overseas – consideration of mandatory quarantine costs in Covid-19 Public Health Response Amendment Bill (Bill) (Ref: MW20-2725)

Thank you for your helpful letter dated 30 July 2020 responding to my letter of 23 July 2020 and the opportunity to comment on the proposed regulations arising from the COVID-19 Public Health Response Amendment Bill (“the Bill”) for the recovery of managed isolation and quarantine (MIQ) costs.

Given the very brief timeframe to provide comments, the Commission has been unable to undertake a thorough review of the human rights implications of the Bill and the proposed regulations. However, I set out below some observations for your consideration.

First, it is not clear to me the extent to which the Government has consulted with Māori in developing the Bill and its proposed regulatory framework.

Second, your letter of 30 July ends: “I will carefully consider advice on NZBORA issues before making any decisions about the design of the cost recovery scheme.” I respectfully encourage you to consider not only NZBORA, but also New Zealand’s relevant human rights obligations which are binding on the government in international law.

Third, I support your proposal to not charge fees to New Zealanders who are returning from overseas on a non-temporary basis (i.e. for 90 days or more) and/or have left New Zealand prior to the regulations coming into force.

Fourth, I am concerned at the proposed costs for New Zealanders that do not fall into these categories. As you rightly observe, for many, these costs will be significant and will have a disproportionate impact on people who are financially disadvantaged. While the consultation document sets out certain proposed charges, as I understand it the charge could be calculated in a variety of ways and that it may increase over time. Again, as I understand it, there appears to be no requirement to notify the public in advance as to what the prescribed charges may be, or how they may be calculated.

Fifth, I note there will be a (welcome) opportunity for fees to be waived in cases of undue financial hardship. The consultation document notes that the Chief Executive of MBIE will be able to take into account the “full circumstances” of the person including various economic factors

and compassionate grounds. However, I am concerned by the lack of detail in clause 32F in the Bill and in the consultation document regarding the proposed regulations concerning waivers. As I understand it, there is no prescriptive detail available yet about what the exact grounds will be, the process to be applied and the thresholds under which the discretionary decisions will be made.

Sixth, I am also concerned at the potential harmful impact of debt recovery processes on persons who are unable to pay back the fees within the proposed 90-day timeframe. The consultation document indicates that 90 days may be the maximum length of time available to pay before a referral to any agency for debt recovery is made. For many, this is unlikely to be enough time to pay off a debt that may be several thousand dollars. Debt recovery action can impact upon the credit ratings of the individuals subject to it and ultimately can lead to penalties and sanctions being imposed. Such outcomes may serve to compound already existing financial hardship.

Seventh, I agree with your assessment that charges may be an indirect limitation on the right to New Zealanders to return to New Zealand, see s 18(2) of the New Zealand Bill of Rights Act 1990 and article 12(4) of the International Covenant on Civil and Political Rights (ICCPR).

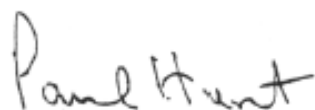
In its General Comment 27 on article 12 ICCPR, the UN Human Rights Committee makes this observation in respect of the right to return to one's country under article 12(4):

“...even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, **reasonable** in the particular circumstances. The Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be **reasonable**.” (para 21) [emphasis added]

In its present form the Bill does not give me confidence that the proposed cost recovery scheme is a “reasonable” limitation as recognised by the UN Human Rights Committee. Moreover, I am concerned that it appears that the aim is to pass the legislation under urgency which jeopardises a consultative nuanced balancing of rights and responsibilities that the legislation requires, for example, consideration of article 12 (above) and article 23 (family life) of ICCPR.

Given doubts about some features of the legislation (above), combined with the expedited legislative process which curtails healthy public consultation, I respectfully recommend that this matter is deferred to the next Parliament with a clear set of options for public comment, including engagement with tangata whenua.

Nāku noa, nā



Paul Hunt
Chief Commissioner