

Decisions to decline MIQ medical needs exemptions were not unreasonable

Legislation	Ombudsman Act 1975
Agency	Ministry of Business, Innovation and Employment
Ombudsman	Chief Ombudsman Peter Boshier
Case number(s)	535323 and 535606
Date	23 December 2020

Summary

The Chief Ombudsman investigated two complaints in late 2020 about the Ministry of Business, Innovation and Employment's decisions to decline the complainants' requests for medical needs exemptions from Managed Isolation and Quarantine (MIQ) requirements.

New Zealand's MIQ requirements are very strict. The relevant Orders state that almost everyone flying into New Zealand has to spend at least 14 days in an MIQ facility. The law does, however, allow for exemptions on the basis of medical needs and exceptional circumstances.

Under the Ombudsmen Act 1975, the Chief Ombudsman can investigate MBIE's administrative actions and decisions. His investigation in these cases focused on MBIE's decision-making process.

In both cases, MBIE followed the process required when considering the two applications. The Chief Ombudsman formed the final opinion that MBIE's decisions were not unreasonable.

New Zealand's MIQ system

New Zealand's MIQ requirements are very strict.¹ The COVID-19 Public Health Response (Air Border) Order (No 2) 2020 requires everyone who enters New Zealand by air be isolated or

¹ For reference purposes, MBIE made its decisions on the applications in August and September 2020. The Chief Ombudsman formed his final opinion on 23 December 2020.

quarantined under the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020.²

The Isolation and Quarantine Order states everyone has to spend a minimum of 14 days in an MIQ facility.³ People must comply with rules requiring the use of protective equipment and social distancing while in the facility. They cannot leave their rooms, except when permitted to do so for things like receiving medical treatment or taking daily exercise. People can leave MIQ on day 14 only if they have returned a negative COVID-19 test. The Order does allow exceptions to some of these rules, but these are very limited.

There are only two grounds of exemption relevant to most applicants—‘medical needs’ and ‘exceptional circumstances’.

Clause 12 of the Isolation and Quarantine Order deals with medical needs exemptions. This clause states that all arrivals must be isolated or quarantined in an MIQ facility. A medical officer of health is empowered to make a determination that someone needs an alternative place of isolation. However, this is unnecessary if MBIE consults a suitably qualified medical practitioner and determines the applicant does not have particular physical or other needs that require an alternative place of isolation.

Exemptions are rare. As of 18 November 2020, 55,136 people had been through MIQ since 17 June 2020.⁴ As of 10 November 2020, MBIE said it had approved only 20 medical needs exemptions and 92 exceptional circumstances applications since taking over responsibility for MIQ from the Ministry of Health on 13 July 2020.

The complainants’ exemption applications

Complainant 1 had pre-existing health conditions which meant they were at a particularly high risk of severe illness or death if they contracted COVID-19. They had been self-isolating for several months in an area of Europe with little COVID-19 transmission and wanted to come home to New Zealand. The complainant said they would take precautions to avoid contracting COVID-19 on the flight to New Zealand and wanted to self-isolate at a short-term rental property to avoid the risk of contracting COVID-19 while in an MIQ facility.

Complainant 2 had severe back pain which, they contended, two weeks in a hotel room would likely exacerbate. They were travelling from Australia and their doctor recommended they self-isolate at home. The complainant said they were prepared to wear a tracking device to confirm this.

² The Air Border Order does exempt certain categories of people, such as diplomatic officials and transit passengers, from the requirement to enter MIQ.

³ These Orders replaced the previous COVID-19 Public Health Response (Air Border) Order 2020 which set similar rules for MIQ.

⁴ MBIE [Managed isolation and quarantine data](#) – last accessed 18 November 2020.

Investigation

MBIE provided the Chief Ombudsman with the case records for both applicants. In both cases, MBIE sent the applicants' requests to Homecare Medical for review.⁵ Medical professionals employed by Homecare assessed the applicants' medical needs, based on the information the applicants had provided. MBIE then sent the assessments to the Ministry of Health team managing medical provision in MIQ facilities. The Ministry of Health advised, in both cases, that the applicants' medical needs could be met in an MIQ facility. MBIE then decided to decline the applications.

The Chief Ombudsman was satisfied that MBIE had followed the process set out in the Isolation and Quarantine Order. It was clear MBIE considered the information the applicants provided to support their requests. The Chief Ombudsman considered it was not unreasonable for MBIE to decline the applications in the circumstances.

Outcome

The Chief Ombudsman formed the final opinion that MBIE's decisions to decline the two exemption applications were not unreasonable.

Disclaimer

This case note is published under the authority of the Ombudsmen Rules 1989. It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.

⁵ Homecare Medical is owned by primary health organisations ProCare and Pegasus Health. It runs the National Telehealth Service, which is co-funded by the Ministry of Health, the Accident Compensation Corporation, the Health Promotion Agency, the Ministry of Social Development, and the Department of Corrections.