

Investigation framework: **Administration of the Managed Isolation Allocation System by the Ministry of Business, Innovation and Employment – Hīkina Whakatutuki**

20 October 2021

The Chief Ombudsman has started a broad investigation into the Ministry of Business, Innovation and Employment – Hīkina Whakatutuki (MBIE)'s administration of the Managed Isolation Allocation System (MIAS). This document sets out the framework for his investigation.

Background

Since 1 July 2021, the Chief Ombudsman has received around 200 complaints from members of the public who are experiencing similar difficulties in trying to obtain a voucher for a place in managed isolation and quarantine (MIQ).

After reviewing all of these complaints, he has decided to address them collectively by commencing a self-initiated investigation using his powers under section 13(3) of the Ombudsmen Act 1975.

While he could investigate each complaint individually, the Chief Ombudsman does not believe this is the most efficient or effective way of addressing any underlying issues.

The Chief Ombudsman's role, as an Officer of Parliament, is to independently investigate the exercise of power by public sector agencies to ensure that there can be trust and confidence in their actions and decisions and that those who are affected have been treated fairly.

As part of his role, the Ombudsman has unique and wide-ranging powers to investigate acts and decisions across the public sector, require all relevant information from any party, and form and report his independent opinion. Carrying out an investigation allows the Chief Ombudsman to make any recommendations he sees fit.

Find out more about the Ombudsman's investigation powers on his [website](#).

The investigation

The focus of the Chief Ombudsman's investigation is to form an independent opinion on how MBIE is discharging its responsibilities with respect to MIQ booking decisions that are affecting people, identify whether there are any vulnerabilities that may be leading to the concerns and complaints as to whether people are being treated fairly, and make recommendations for improvement as necessary.

The Chief Ombudsman recognises that MBIE is dealing with an unprecedented situation that poses significant challenges. The MIAS has to deal with large numbers of people seeking to enter,

or return to, New Zealand in the context of a constantly shifting global pandemic during which it has closed its borders for the first time. The MIAS involves the interaction of a range of public health, economic and fiscal policies, with the interests of individuals seeking entry having to be balanced against the need to keep New Zealand safe.

The investigation will focus on the following concerns that have been raised by complainants:

The allocation system is said to be unlawful. Many complainants have questioned whether the way in which MIAS operates might breach the New Zealand Bill of Rights Act 1990 by unjustifiably limiting a citizen's right to re-enter New Zealand¹ and the Government's responsibilities under The Treaty of Waitangi / Te Tiriti o Waitangi.² The Chief Ombudsman is aware of current court proceedings about the Government's operation of the MIQ system and will use this to inform his investigation.

The allocation system is said to be unfit for purpose. A majority of complainants have raised concerns that there is insufficient capacity in MIQ to accommodate all New Zealanders wishing to return home in a timely manner. They question why MBIE does not, for instance, increase capacity by building dedicated facilities, repurposing more hotels or allowing more people to self-quarantine.

The allocation system is said to be unfair. Complainants have alleged failures by MBIE to implement a fair queuing/wait-list system; provide reasonable accommodation for users with disabilities; and adequately safeguard the system against the use of bots and scripts and third parties operating for financial gain. Their key concern relates to the difficulty and stress they face when trying to secure a voucher.

The allocation system is said to be poorly managed. Many complainants raised issues about how MBIE makes prioritisation decisions within MIAS about who gets a voucher. Some also complained about the lack of flexibility in the system, arguing for alternative means of isolation (such as home isolation for those who are fully vaccinated or returning from countries with low or no COVID transmission rates) or for a longer 'window' in which to apply for an MIQ space (both for regular users of MIQ and those seeking emergency allocation spaces). They also say the MIAS does not take into consideration the uncertainty of flight schedules, nor is available MIQ capacity being used efficiently.

The Chief Ombudsman will look at how MBIE has addressed, or proposes to address, any reasonable concerns about the current system, and whether it is taking reasonable and timely steps towards future planning for the allocation of spaces in MIQ.

The Chief Ombudsman will differentiate between decisions or recommendations made by MBIE – a public sector agency that he has jurisdiction over under the Ombudsmen Act – and those made by Ministers or by Cabinet – which he does not. He will however consider the advice and recommendations tendered to Ministers by MBIE officials.

Since this is a broad investigation into the way MIAS works initiated by the Chief Ombudsman himself, it will not directly result in any findings on the individual complaints. It is also important

¹ Section 18(2) of the New Zealand Bill of Rights Act 1990.

² The Ombudsman acknowledges there are two different versions of the document, with different meanings.

to note that the Chief Ombudsman does not have any immediate intervention powers and cannot issue complainants a voucher or give priority in the queue. The Chief Ombudsman has advised all complainants that, if they are seeking an MIQ voucher or an emergency allocation, to continue following the relevant process.

The Chief Ombudsman will be informing Parliament and the complainants of his substantive findings from this investigation and any recommendations early next year. He may also make public statements on his findings on the four issues under investigation at different stages rather than waiting to publish an overall opinion at the very end. Information on the outcome of the full investigation will also be published on his website.

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