

**AMNESTY
INTERNATIONAL**



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Copied to: The Prime Minister and the Minister of Health

26 August 2020

Dear Hon Dr Megan Woods,

COVID-19 legislation human rights scrutiny

I am writing regarding the development and potential human rights implications of COVID-19 legislation, including the latest COVID-19 Public Health Response Amendment Act [“the Amendment Act”] and the fee-paying framework for managed isolation.

Amnesty International Aotearoa New Zealand [“Amnesty NZ”] is concerned about the lack of opportunities for public consultation and scrutiny of recent legislation forming part of the Government’s response to COVID-19. Amnesty NZ encourages the Government to place human rights at the centre of all aspects of its response, including legislation that is carefully considered and enables an appropriate level of public scrutiny, participation and procedural and substantive safeguards.

Amnesty NZ champions a wide range of human rights issues of both national and international significance. We have over 8 million supporters and activists worldwide, including over 40,000 supporters in New Zealand. We regularly engage with legislation and policies that impact on human rights in New Zealand, including on matters relating to COVID-19.

Beyond posing staggering public health and financial challenges, the pandemic and the resulting economic crisis highlight New Zealand’s human rights obligations. We welcome the New Zealand Government’s recognition for the need to pursue robust, crucial measures that urgently stop the spread of COVID-19. These measures directly implicate human rights obligations such as the right to the highest attainable standard of physical and mental health and the right to life.

However, Amnesty NZ is concerned about the lack of opportunities for public consultation and human rights scrutiny on aspects of this response, especially when introducing new legislation. Whilst we recognise the unprecedented demands placed on Government and the need to respond with urgency in some circumstances, enabling human rights scrutiny, particularly for mandatory measures, is essential for both enduring and effective people-centered solutions and maintenance of the rule of law.

This is especially relevant for the COVID-19 Public Health Response Amendment Act 2020, and that of its original Act, the COVID-19 Public Health Response Act. These are significant pieces of legislation with implications for New Zealand’s human rights obligations, including under

the International Covenant on Civil and Political Rights, New Zealand Bill of Rights Act 1990, and *Te Tiriti o Te Waitangi*.

In response to concerns raised by civil society at aspects of the COVID-19 Public Health Response Act and the rapid speed that it was passed with minimal public consultation, a post-enactment inquiry was held into the Act. This received 1342 written submissions, including from [Amnesty NZ](#), and heard 19 oral submissions. The Inquiry's [report](#) stated that a "significant number were opposed to the legislation on process grounds, and the principle of restrictions on liberty."

Most recently, the Amendment Act introducing the fee-paying framework for managed isolation was introduced to Parliament on 29 July 2020, passed under urgency on 4 August 2020 and became law on 6 August 2020. This is despite the New Zealand Government being aware of the pressures on the managed isolation system for some time, and Queensland in Australia having introduced a similar fee-paying framework from 17 June 2020.

Whilst the Amendment Act does allow for some exemptions, and Ministerial orders cannot limit rights (or must be justified limits) contained in the Bill of Rights Act, the legislation did not receive crucial scrutiny through the select committee process. It also creates a high level of discretion and uncertainty as to how quarantine fees and cost exceptions are to be applied through regulations and decisions by government officials. This is particularly cogent given that these decisions could impact on rights such as not to be arbitrarily deprived of the right to enter one's own country and freedom from discrimination. Amnesty NZ emphasises that for certain rights' restrictions to be legitimate, they can never be discriminatory, and they must be demonstrably legal, necessary, proportionate, time-bound and no broader than strictly required. Certain rights are also non-derogable, that is, they cannot be suspended even in a state of emergency.

Finally, Amnesty NZ notes the judgment of the High Court in *Borrowdale v Director-General of Health* [2020] NZHC 2090 of 19 August 2020. The High Court declared that the requirement that New Zealanders stay at home for the nine day period between 26 March and 3 April was justified, but unlawful. The Court found that the Government acted in "a necessary, reasonable and proportionate" way during the first nine days of the nationwide lockdown, but there was not a clear lawful basis for the powers exercised. Whilst we appreciate the quick and decisive action needed to protect life and health, the case does highlight the importance of the rule of law and any legitimate limitations on certain rights *also* complying with the human rights principle of legality. In practice, legality requires that restrictions are provided for and carried out in accordance with the law, with substantive and procedural safeguards in place.

Amnesty NZ encourages the Government to place human rights at the centre of all its responses to COVID-19, including legislation that enables adequate scrutiny, participation and procedural and substantive safeguards.

Yours faithfully,



Meg de Ronde
Amnesty International Aotearoa New Zealand
Executive Director