



COVERSHEET

Minister	Hon Chris Hipkins	Portfolio	COVID-19 Response
Title of Cabinet paper	COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2020	Date to be published	21 June 2021

List of documents that have been proactively released		
Date	Title	Author
16 December 2020	COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2020	Office of the Minister for COVID-19 Response
16 December 2020	CBC-20-MIN-0136	Cabinet Office
December 2020	Supplementary Analysis Report: Amendments to the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020	MBIE

Information redacted

YES / NO *(please select)*

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Some information has been withheld for the reasons of Legal professional privilege, Confidential advice to Government, and Commercial information.

In Confidence

Office of the Minister for COVID-19 Response

Chair, Cabinet Business Committee

COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2020

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2020.

Executive Summary

- 2 Managed Isolation and Quarantine (MIQ) is a public health intervention, playing a central role in New Zealand's COVID-19 elimination strategy by preventing community transmission of imported COVID-19 cases.
- 3 The COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 (the Regulations) set fees for people entering MIQ facilities. The fees, which came into effect on 11 August 2020, are less than half the total MIQ costs at the time the Regulations were made, so are significantly subsidised by the government.
- 4 The fee settings were designed to balance the rights of New Zealand citizens and permanent residents to enter New Zealand with the need to have an economically sustainable MIQ system. Cabinet intended that the charges would be kept under regular review.
- 5 The rationale underpinning the level of subsidised fees in the Regulations does not apply to critical workers, who as temporary entry visa holders do not have a protected right to enter New Zealand.
- 6 On 16 November 2020, in making decisions about border exceptions for Recognised Seasonal Employer (RSE) workers, Cabinet agreed:
 - 6.1 to recover a higher level of cost for MIQ services from all employers of critical workers, based on the average cost, then estimated to be \$4,722 per person, through a contract with the employer or industry group;
 - 6.2 that the MIQ fees should be paid upfront by employers of critical workers.
- 7 Subsequently, Ministers discussed the level of fee and how it might apply in circumstances where multiple occupancy would be a preference to support MIQ capacity, including a reduced fee for a second adult in a room.

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- 8 The most effective way to implement Cabinet's decisions is through amendments to the Regulations. In addition to those decisions, I am seeking agreement so the fee settings for critical workers:
 - 8.1 set a standard fee of \$4,800 + GST per person in a room;
 - 8.2 allow for a reduced fee of \$2,600 + GST to be charged for the second adult in a room where a risk assessment has been completed and room sharing is acceptable to increase MIQ capacity;
 - 8.3 in the case of family groups, allow for a reduced fee of \$2,600 + GST to be charged for the second adult in a room, and \$1,400 + GST for a child (three years or older);
 - 8.4 clarify that critical workers and their employers or supporting agencies should not be able to apply for a fees waiver on grounds of undue financial hardship or special circumstances.
- 9 The operational presumption is that groups of critical workers are allocated to individual rooms in MIQ. However, where the Ministry of Health undertakes a risk assessment and permits groups of critical workers to share rooms, or an individual critical worker is sharing a room with a partner and/or dependent child, I view that reduced rates should apply for additional people in the room.
- 10 I am not intending to make any changes to the fees settings for critical health workers (border exception) at this point in time.
- 11 The government will continue to subsidise MIQ for critical workers entering New Zealand, however the proposed higher fee better balances the employer's contribution alongside the government's contribution.
- 12 The COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2020 give effect to Cabinet's 16 November 2020 decision and these further proposals. I seek authorisation to submit the Amendment Regulations to Executive Council.
- 13 The Amendment Regulations have been developed quickly. Consideration of a more nuanced charging system for critical workers and similar groups will be worked through in the broader review of the fees system that the Ministry of Business, Innovation and Employment (MBIE) is planning to undertake in 2021.

Background

The fee system was introduced because it was not sustainable for the government to continue to fund all the costs of MIQ

- 14 Accommodating people travelling to New Zealand while maintaining our critical border defences comes at significant cost to taxpayers. MIQ is a complex system of accommodation facilities, personnel, information systems, testing regimes and supporting services that enable positive COVID-19 cases to be detected early after arrival to New Zealand and to be isolated from the community.
- 15 The COVID-19 Public Health Response Act 2020 (the Act) establishes clear legal authority for MBIE to charge people entering New Zealand for the costs of their stay in MIQ. It is a purpose of the Act to support a public health response to COVID-19 that is economically sustainable and allows for the recovery of MIQ costs. The Regulations came into force on 11 August 2020.
- 16 The fees settings aim to strike a balance between the rights of New Zealanders to enter New Zealand and having an economically sustainable MIQ system.
- 17 The fees currently set out in the Regulations are:
 - 17.1 \$3,100 (incl GST) for the first or only person in the room;
 - 17.2 \$950 (incl GST) for an additional adult in the same room;
 - 17.3 \$475 (incl GST) for an additional child (3-17 years) in the same room;
 - 17.4 No charge for a child under three years old sharing a room.
- 18 New Zealand citizens and residents¹ are liable for a charge if they are overseas and return to New Zealand for less than 90 days; or left New Zealand after 11 August 2020 and return at a later date.
- 19 Temporary visa holders have to pay the MIQ fees, unless they left New Zealand on or before 19 March 2020, and were ordinarily resident in New Zealand as of 19 March 2020.
- 20 Full or partial MIQ fee waivers are available in cases of undue financial hardship or other special circumstances. The Chief Executive of MBIE can also defer payment due dates in appropriate situations and allow for payment by instalment if financial hardship would otherwise result.

¹ 'New Zealand citizen or resident' means New Zealand citizens (including those in the Cook Islands, Niue and Tokelau) and residence class visa holders. It also includes Australian citizens and permanent residents who are ordinarily resident in New Zealand.

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- 21 Individuals are liable for the payment of fees. MBIE can send invoices to another person (e.g. employer), but liability for any debt resulting of non-payment sits with the individual who stayed in MIQ. Invoices can only be issued on or after the day a person leaves MIQ.

The Regulations made critical workers liable for the fees, but these are subsidised

- 22 The New Zealand border is currently closed to most people except citizens and residence class visa holders or those who come in as an exception to border restrictions. People who enter through a border exception must apply through Immigration New Zealand (INZ) and have a critical purpose for coming to New Zealand. Two of the categories of border exceptions are “critical health workers” and “other critical workers”².
- 23 Employers or a supporting agency must submit a request for approval of critical workers (including any partners or dependent children) to INZ. Cabinet can also approve classes of workers to be critical workers (e.g. deep sea fishing crew and RSE workers). The current Regulations specify that critical workers and critical health workers are liable to pay the fees.
- 24 The prescribed fee is based on the costs of accommodation and food only at the lowest cost facilities, to ensure that no users are overcharged from a cost-recovery perspective. The current fee is significantly less than the average MBIE-related costs across the MIQ network, and likely lower than the average amount paid in respect of critical workers prior to the Regulations coming into force on 11 August 2020³.
- 25 A different fee for critical workers was not considered during the development of the Regulations due to the speed of policy development and drafting. For similar reasons, the Regulations did not include the ability to make employers (or supporting agencies) of critical workers liable, only individuals (though Cabinet’s and Ministers’ intentions were to charge employers directly [CAB-20-MIN-0268]).

The fees need to be kept under regular review to reflect the changing domestic and global situation

- 26 The government has indicated it intends to gradually open up New Zealand’s border to support the economic and social recovery. Cabinet recently approved class exceptions for a number of large groups of critical workers, including 570 deep sea fishing crew, 210 rural contractors, 60 shearers and up to 2,000 RSE workers.

² An “other critical worker” is a person who is required to come to New Zealand for a government approved infrastructure project or event, or a major government-approved programme; in support of an approved government-to-government agreement; or for work which brings significant wider benefit to the national or regional economy. The person must have unique experience and technical or specialist skills not readily obtainable in New Zealand; or be undertaking a time critical role.

³ As MBIE did not have the ability to charge fees until the Regulations came into force, invoices up until that point were generated by, and payments made to, hotels, to cover the direct costs of critical workers’ accommodation, food and ancillary services (chargeback).

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- 27 The rationale underpinning the government subsidising the costs of MIQ is not relevant to critical workers. Critical workers, as temporary entry class visa holders, do not have a protected right to enter New Zealand.
- 28 Furthermore, critical workers enter New Zealand primarily for economic or job-related reasons, and the workers, employers and supporting agencies receive the direct benefits of bringing critical workers into the country. Organisations should be expected to contribute a greater portion of MIQ costs as part of the business's costs.
- 29 Continuing to subsidise the costs of MIQ for critical workers to the extent that the government is currently doing would reduce the fiscal headroom that could be used to support the economic recovery.

Policy

- 30 On 16 November 2020, in making decisions about border exceptions for RSE workers, Cabinet agreed [CAB-20-MIN-0473]:
- 30.1 to recover a higher level of cost for MIQ services from all employers of critical workers, based on the average cost, then estimated to be \$4,722 per person, through a contract with the employer or industry group;
- 30.2 that employers of critical workers should pay MIQ fees upfront, where practicable.
- 31 Legal professional privilege
- 32 To implement Cabinet's 16 November 2020 decisions, the Amendment Regulations:
- 32.1 charge less-subsidised fees for critical workers' stays in MIQ and make employers or supporting agencies liable for this fee (if there is no employer or supporting agency, the individual will be liable);
- 32.2 allow for a reduced fee for multiple occupancy where a risk assessment has been completed by the Ministry of Health and MIQ, or where there are families (paragraphs 40-42 refer);
- 32.3 allow MIQ to require payment in advance of a critical worker's arrival in New Zealand, where appropriate.
- 33 Under current border settings all critical workers must have an employer or supporting agency to apply for a border exception. To ensure the Regulations are durable if border settings change, I propose to make the individual critical worker liable if there is no employer or supporting agency.

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- 34 There are currently operational limitations to issuing invoices in advance. For example, it is difficult to identify incoming critical workers (and their employers or supporting agencies) who are not part of groups approved as class exceptions. It is also challenging for some groups where the risk assessment to allow for room sharing cannot be fully completed until arrival in New Zealand. Therefore, I propose to allow MIQ the flexibility to decide when payment in advance is appropriate. Operational improvements to support payment in advance are expected to be in place in the first quarter of 2021.
- 35 In addition to the previously agreed matters, I seek approval that:
- 35.1 the fee for the first or only person in a room be set at \$4,800 + GST (\$5,520 including GST);
 - 35.2 the fee for the second adult in a room be set at \$2,600 + GST (\$2,990 including GST) and \$1,400 + GST (\$1,610 including GST) for a child;
 - 35.3 dependent children of critical workers under 3 years old are not charged;
 - 35.4 critical workers and employers or supporting agencies of critical workers should not be able to apply for a fees waiver on grounds of undue financial hardship or special circumstances;
 - 35.5 the fee settings for critical workers will not apply to critical health workers;
 - 35.6 the new fee settings for critical workers will commence on 1 January 2021 and apply to all critical workers who arrive in New Zealand after that date.

Charging a fee of \$4,800 + GST for the first or only critical worker in a room, with reduced rates where room-sharing is approved

- 36 As of 26 November 2020, the average weighted cost for a single person in MIQ for 14 days is \$4,800 + GST (\$5,520 including GST). This only covers MBIE related costs and does not include Health costs or costs for other services provided by partner MIQ agencies, such as the Aviation Security Service (AvSec), the New Zealand Defence Force (Defence) and the New Zealand Police. As such, the average weighted cost still includes a degree of subsidisation by the government.

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37 The table below shows how the current MIQ fee for a single occupant compares to the average weighted costs across the MIQ network.

Table 1: Current prescribed MIQ fee for a single occupant compared to weighted average MBIE costs across the MIQ network (as at 26 November 2020)

<i>Standard 14-Day MIQ stay per person</i>	Current fees in Regulations	Cost to Government		
	<i>First/single occupant</i>	<i>Weighted average across MIQ network - first adult*</i>	<i>Weighted average across MIQ network - second adult</i>	<i>Weighted average across MIQ network – child 3-17 yrs</i>
Hotel Facility (incl food)		\$3,427	\$1,233	\$588
Transport**		\$255	\$256	\$256
Operational		\$516	\$517	\$259
Support		\$602	\$595	\$297
Total excl GST	\$2,696	\$4,800	\$2,600	\$1,400
Total incl GST	\$3,100	\$5,520	\$2,990	\$1,610

*Based on a hotel occupancy rate of 90% and an average occupancy rate of 1.35 people per room

** Transport costs vary significantly across regions due to the distance and transportation methods from point of entry to different isolation locations.

38 There are only a few situations where critical workers share rooms:

38.1 groups of critical workers – only where the Ministry of Health and MBIE undertake a health risk assessment and permit room-sharing;

38.2 individual critical workers that bring partners or dependent children.

39 It is likely that the majority of critical workers entering the country travel alone or as part of a large group. There is limited data available on the number of people entering as families of critical workers. I expect that most critical workers do not bring families because their roles, by definition, are time-limited and their visas can only be granted for up to six months. Of the class exceptions granted for large groups of critical workers so far, only rural contractors and vets were eligible to bring partners or dependents.

40 The Ministry of Health and MIQ undertake a risk assessment of all incoming large groups. This risk assessment considers a range of health and operational factors and includes a recommendation as to whether room share arrangements are appropriate. The majority of the health assessments are completed prior to departure, to ensure any health concerns are captured early and any implications for MIQ capacity can be factored in. The second stage is a health check on arrival before being allocated a room in MIQ. This is essentially a health check to ensure those arriving are not symptomatic for COVID-19 or any other communicable health concerns.

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- 41 This assessment process is still underway for the groups planned to arrive in early 2021 and no final decisions have been made. It is less likely that groups from higher risk countries will be allowed to room-share, subject to passing the health screening on arrival. However, groups from lower-risk countries, such as parts of the Pacific, may be allowed to room share.
- 42 MIQ also undertakes an operational risk assessment as to whether room-sharing is appropriate. Room-sharing, where permissible in health terms, is not intended to cost save but allows MIQ to accommodate large groups within timeframes planned. This approach will help to facilitate large groups to enter more quickly.
- 43 The operational presumption is that large groups of critical workers are allocated to individual rooms in MIQ. However, where the risk assessment permits large groups of critical workers to share rooms, or an individual critical worker is sharing a room with a partner and/or dependent child, reduced rates can apply for additional people in the room.
- 44 I propose to charge critical workers a fee of \$4,800 + GST (the average weighted cost) for the first person in a room. Where room-sharing is allowed, \$2,600 + GST (\$2,990 including GST) will be charged for the second adult in a room, and \$1,400 + GST (\$1,610 including GST) for a child three years and older. I propose that children under 3 years old will not be charged.
- 45 This approach still allows for the possibility of invoicing large groups in advance where it is practicable to do so.
- 46 Single occupancy (and therefore the single person room rate) is the starting point for all critical workers. The approach ensures that room-sharing for large groups of critical workers, where it is appropriate and a risk assessment has been completed, and for families can happen. I expect that this will happen as the exception, rather than the rule.

Fees waivers on special circumstances and undue financial hardship grounds

- 47 Under the current Regulations, full or partial MIQ fee waivers are available in cases of undue financial hardship or other special circumstances. This is to ensure that the fees do not present an unjustified barrier on the rights of New Zealand citizens and permanent residents to return to New Zealand.
- 48 In August 2020, Cabinet agreed that critical workers, including critical health workers, would not be able to apply for waivers [LEG-20-MIN-0141 refers]. Due to the speed of drafting, this restriction was not included in Regulations meaning that critical workers and critical health workers are able to apply for fees waivers.
- 49 As critical workers and their employers or supporting agencies receive the immediate benefits of critical workers coming to New Zealand, I seek agreement to clarify that critical workers and their employers or supporting agencies should not be able to apply for a fees waiver on grounds of undue financial hardship or special circumstances.

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The new fee settings would not apply to critical health workers

- 50 Critical health workers are another border exception, separate from the other critical workers, but subject to similar requirements and processes in immigration settings, and subject to the current fees set in the Regulations.
- 51 The term critical health workers encompasses workers in a variety of roles, ranging from medical practitioners to home care and support workers. These workers are employed across the health and disability system. While a number of them are employed by District Health Boards, employers can also be Non-Government Organisations, or smaller, private organisations such as General Practices, Pharmacies or Aged Residential Care providers. These employers would have varying abilities to meet the costs of MIQ.
- 52 Some critical health workers do not have an employer – a number are self-employed individuals or internationally qualified nurses entering New Zealand to undertake the Nursing Council's Competence Assessment Programme.
- 53 The health and disability system has historically relied on the international workforce. Forty per cent of our medical workforce is internationally qualified, and each year approximately 500 internationally trained and qualified Resident Medical Officers come into New Zealand. On top of that approximately 50-100 Senior Medical Officers (i.e. with more than 10 years' experience) enter the country each year.
- 54 Any resurgence of COVID-19 in the community may require the need for critical health workers to enter New Zealand quickly. Charging higher fees for MIQ may have impacts on the health workforce, and our ability to quickly scale up resources if required. I have also received feedback from stakeholders that MIQ fees have impacted their ability to recruit international health practitioners to New Zealand (e.g. rural General Practitioners).
- 55 For this reason I propose that MIQ fees for critical health workers remain unchanged, at least until more is understood about the impact of MIQ fees on the resilience and scalability of the health workforce.

The new fee settings will apply to critical workers that enter New Zealand on or after 1 January 2021

- 56 I propose that the new fee settings apply to all critical workers and their families that arrive in New Zealand on or after 1 January 2021. This will include class exceptions of critical workers that Cabinet or Ministers have previously approved. Those already in MIQ on 1 January 2021 will still pay the lower fee.
- 57 On 21 September 2020, Cabinet agreed to a critical worker border class exception for up to 570 deep sea fishing crew, 210 rural contractors and 30 veterinarians to enter New Zealand [CAB-20-MIN-0453].

IN CONFIDENCE

- 58 The majority of veterinarians and rural contractors have already entered the country. The second tranche of 227 deep sea fishing crew is scheduled to arrive in New Zealand on 6 January 2021 and will be liable for the new fee. Officials have discussed this with industry.

There are risks involved in making changes to the charging regime at pace

- 59 There is significant variation in the costs of providing MIQ depending on the standard of the facility involved. This variable standard may generate complaints from employers of critical workers that they are paying too much for a facility which is below the average standard.

- 60 Most critical workers are allocated across the system, with large groups allocated according to their needs. Some element of cross subsidisation within the class of critical workers is unavoidable and is permitted under the Act so long as it is an actual and reasonable estimate for the class.

- 61 Confidential advice to Government

- 62 There is also a risk that introducing a less subsidised fee for critical workers could lead to a perception that critical workers would be prioritised in the Managed Isolation Allocation System (MIAS), because they are paying more for MIQ than other groups.

- 63 MIAS currently operates largely on a first-come first-served basis. The other paper I have brought to Cabinet (*Improvements to the allocation of managed isolation rooms*) proposes to establish a ring fenced allocation of MIQ rooms solely for use by New Zealanders, which would protect their legal right to return home, initially set at 75 per cent of allocable rooms. The remaining 25 per cent of allocable rooms would continue to be made available online through MIAS for both non-New Zealanders (including critical workers) and New Zealanders to book.

Invoicing and debt recovery

- 64 The current Regulations do not allow for invoicing in advance. Under existing operational settings, people who are required to pay the MIQ charge are sent an invoice shortly after their departure from managed isolation and have 90 days to pay.

- 65 As critical workers do not have a protected right to enter New Zealand in the same way that citizens and permanent residents do, the Amendment Regulations for critical workers enable MIQ to require payment in advance of a critical worker's arrival in New Zealand, where practicable.

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- 66 It is intended that employers or supporting agencies of critical workers are liable for the fees and that they will be invoiced in advance of (or immediately after) a critical worker's arrival in New Zealand, wherever practicable.
- 67 For the purpose of invoicing critical workers arriving in groups, I have directed officials to specify a 30 day payment period in the operational processes, and to report back to myself and the Minister of Finance quarterly on the level of fees paid.
- 68 MIQ continues to make improvements to its processes for issuing invoices and collecting payment, in particular through MIAS. I expect in early 2021, improved systems will be in place, which will reduce the likelihood of progressing to a debt recovery option.

Timing and 28-day rule

- 69 A waiver of the 28-day rule is sought so the Amendment Regulations can come into force on 1 January 2021. The purpose of the Amendment Regulations is to recover closer to the actual costs of MIQ from the employers and supporting agencies of critical workers. The majority of critical workers entering the country in the next few months will be RSE workers, arriving from mid-January to mid-March. Waiving the 28 day rule is necessary to ensure the new fees are in place for RSE workers and are able to be charged in advance of their arrival.
- 70 These changes will apply to any critical workers and their families entering New Zealand on or after 1 January 2021.
- 71 I am aware that there will be a small proportion of critical workers who have already booked their place in MIAS before the Amendment Regulations come into force, however I judge that a line in the sand is the most fair and practicable way of operationalising the changes.

Compliance

- 72 The Regulations comply with the following:
- 72.1 the principles of the Treaty of Waitangi;
 - 72.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 (these are discussed further at paragraphs 77-78) and the Human Rights Act 1993;
 - 72.3 the principles and guidelines set out in the Privacy Act 1993;
 - 72.4 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Compliance with the principles of the Treaty of Waitangi

- 73 The proposed amendments do not impact the ability of Māori to enter New Zealand, as they would generally not be entering under the critical worker class exception. There could however be implications for Māori employers bringing critical workers into the country, as under the proposed changes employers would be liable for the higher MIQ fee. Deferred payments and payment by instalment in the case of financial hardship will remain available to all employers of critical workers.

Compliance with relevant international standards and regulations

- 74 A number of international law issues were factored into the original design of the fees system. The International Health Regulations 2005 (IHR) is an international treaty which sets out the measures states may take to respond to the international spread of diseases like COVID-19. Article 40 of the IHRs on its face prohibits charging short term travellers for their isolation or quarantine.

- 75 Legal professional privilege

Statutory prerequisites before making the Regulations

- 76 The COVID-19 Public Health Response Act 2020 requires that before I can recommend making regulations which set charges for MIQ, I must be satisfied of the following matters:
- 76.1 the charges concerned relate to managed isolation or quarantine facility (MIQF) costs (including direct and indirect costs);
 - 76.2 the prescribed charges recover from any class of persons no more than an estimate of the actual and reasonable MIQF costs incurred in relation to that class (including both direct and indirect costs);
 - 76.3 there is appropriate provision to grant relief from the payment of the prescribed charges in circumstances where payment of the charges would cause undue financial hardship; and
 - 76.4 the prescribed charges do not limit or are justified limits on the rights and freedoms in the New Zealand Bill of Rights Act 1990 (NZBORA).
- 77 I am satisfied that these prerequisites are met. I have also consulted with the Minister of Health, which I am required to do in relation to cost recovery Regulations.

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- 78 The proposed fees for critical workers and their partners/dependent children relates to MIQ. The fees are less than the actual costs of MIQ because they do not include costs of MBIE's partner agencies or other additional reasonable costs. The Act allows for charges to be set at a level that take into account the costs or potential costs arising indirectly in relation to a class of persons, even if a particular individual in the class does not incur those costs directly.
- 79 Employers, supporting agencies and critical workers themselves receive the immediate economic benefit of the critical worker coming to New Zealand. I consider that it is not appropriate that they be able to seek waivers on undue financial hardship grounds. Deferred payments and payment by instalment in the case of financial hardship will continue to be available.
- 80 Under NZBORA, New Zealand citizens have a right to enter New Zealand. Permanent residents also have a right to enter New Zealand under the Immigration Act 2009. The proposed amendments do not engage the right to enter New Zealand because critical workers do not have a protected right to enter New Zealand in the same way that citizens and permanent residents do.
- 81 I have also considered whether the proposed fees for critical workers and their families could be discriminatory. Everyone has the right to be free from discrimination on prohibited grounds under NZBORA. Prohibited grounds of discrimination include ethnic or national origins, which includes nationality or citizenship.
- 82 The differential treatment of critical workers and their families is not based on national origin, but instead is based on the legal basis in which the person arrives in New Zealand. Preferential treatment under the Regulations is justified and given to those who have a right to enter New Zealand, as opposed to critical workers who are only permitted to enter New Zealand based on the economic and social value their entry provides to New Zealand.

Regulations Review Committee

- 83 I do not consider there are grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel

- 84 The COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2020 are certified by the Parliamentary Counsel Office as being in order for submission to Cabinet, subject to the following:
- 84.1 the statutory prerequisites relating to regulations in the COVID-19 Public Health Response Act 2020 are met; and
 - 84.2 the granting of a waiver of the 28-day rule to allow the regulations to come into force on 1 January 2021.

Impact Analysis

- 85 No Regulatory Impact Statement (RIS) accompanied this proposal when it was introduced to the Cabinet. Pursuant to the Cabinet's impact analysis requirements, MBIE has produced a Supplementary Analysis Report (SAR) for the proposal COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2020. A joint quality assurance panel, chaired by Treasury and with members from MBIE, has reviewed this SAR and agreed that it partially meets the quality assurance criteria.
- 86 Due to time constraints, there has been limited engagement with public and industry stakeholders on increasing the fees for RSE workers and critical workers in MIQ. At the same time, employers from the horticulture and viticulture sectors, who are among those most impacted by a fee increase, have commented publicly on the proposal since it was announced on November 27, 2020. Their concerns focused on the number of RSE workers who can come in under the new legislation, rather than the higher fee and employer liability. The panel considers that this limitation does not significantly impair the quality of the impact analysis.

Publicity

- 87 A communications plan will be developed by officials in consultation with the Minister's office to ensure widespread awareness of amendments to the fees regime. I intend to make a public announcement after Cabinet's decision.
- 88 The horticulture and wine industries, who will be most impacted by the proposed changes to the fees regime for critical workers, were advised of the broad direction of changes to the fees settings for RSE workers through the government's announcement on 27 November 2020.

Proactive release

- 89 This paper will be proactively released after the Amendment Regulations are made, with redactions made as appropriate.

Consultation

- 90 The following agencies were consulted: Ministry of Health, Immigration New Zealand, Parliamentary Counsel Office, Department of the Prime Minister and Cabinet (Policy Advisory Group), the Treasury, Ministry of Transport, Ministry of Justice, Ministry of Primary Industries, Ministry of Foreign Affairs and Trade, and the Ministry of Business, Innovation and Employment (immigration policy).

Recommendations

I recommend that Cabinet Business Committee

- 1 **Note** that on 16 November 2020, in making decisions about border exceptions for RSE workers, Cabinet agreed [CAB-20-MIN-0473]:
 - 1.1 to recover a higher level of cost for MIQ services from all employers of critical workers, based on the average cost, currently estimated to be \$4,722 per person, through a contract with the employer or industry group;
 - 1.2 that employers of critical workers should pay MIQ fees upfront;
- 2 **Note** that the most efficient way to give effect to the above decision is to amend the Regulations, which do not currently allow a higher fee to be charged, for employers to be liable, or for payments to be required in advance;
- 3 **Note** that the operational presumption is that groups of critical workers do not share rooms, except where a risk assessment is completed and permits room-sharing;
- 4 **Note** that individual critical workers can share rooms with partners or dependent children;
- 5 **Agree** to amend the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 to:
 - 5.1 charge a higher fee for critical workers' and their families' stays in MIQ;
 - 5.2 make employers or supporting agencies of critical workers liable for the charges, or the individual if there is no employer or supporting agency;
 - 5.3 allow MBIE to require payment in advance, where appropriate;
- 6 **Agree**, to reflect decisions previously made by Cabinet by:
 - 6.1 charging critical workers:
 - 6.1.1 \$4,800 + GST per person;
 - 6.1.2 where a risk assessment has been completed, allowing for a reduced fee of \$2,600 + GST for the second adult in a room;
 - 6.1.3 in the case of family groups, allowing for a reduced fee of \$2,600 + GST for the second adult in a room, and \$1,400 + GST for a child (three years or older);
 - 6.2 that dependent children of critical workers under 3 years old are not charged;

I N C O N F I D E N C E

- 6.3 that critical workers and their employers or supporting agencies should not be able to apply for a fees waiver on grounds of undue financial hardship or special circumstances;
- 6.4 that the new fee settings for critical workers will not apply to critical health workers;
- 7 **Note** that the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2020 will give effect to the decisions referred to in paragraphs 1 to 6 above;
- 8 **Authorise** the submission to the Executive Council of the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2020;
- 9 **Note** that a waiver of the 28-day rule is sought:
- 9.1 so that the Regulations can come into force on 1 January 2021;
- 9.2 on the grounds that this will ensure the new fee settings are in place for RSE workers arriving from mid-January to mid-March;
- 10 **Agree** to waive the 28-day rule so that the regulations can come into force on 1 January 2021;
- 11 **Note** that section 33A of the COVID-19 Public Health Response Act 2020 requires that the responsible Minister must consult with the Minister of Health before recommending the making of an Order in Council relating to cost recovery;
- 12 **Note** that section 32C of the COVID-19 Public Health Response Act 2020 requires that the responsible Minister must be satisfied of the following matters before recommending regulations be made under section 33A:
- 12.1 the charges concerned relate to MIQ costs (including direct and indirect costs);
- 12.2 the prescribed charges recover from any class of persons no more than an estimate of the actual and reasonable MIQ costs incurred in relation to that class (including both direct and indirect costs);
- 12.3 there is appropriate provision to grant relief from the payment of the prescribed charges in circumstances where payment of the charges would cause undue financial hardship;
- 12.4 the prescribed charges do not limit or are justified limits on the rights and freedoms in the New Zealand Bill of Rights Act 1990;
- 13 **Note** the advice of the Minister for COVID-19 Response that these requirements have been met;

I N C O N F I D E N C E

- 14 **Direct** MBIE officials to report quarterly to the Minister for COVID-19 Response and Minister of Finance on MIQ fees collected.

Authorised for lodgement

Hon Chris Hipkins

Minister for COVID-19 Response