



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.

Impact Statement: Amendments to the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020

Section 1: General information

1.1 Purpose

The Ministry of Business, Innovation and Employment (MBIE) is primarily responsible for the analysis and advice set out in this Supplementary Analysis Report, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing final decisions to proceed with a policy change to be taken by Cabinet which will inform regulatory changes to the Managed Isolation and Quarantine (MIQ) fee settings.

The proposed approach involves amending the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 (the Regulations) to charge critical workers a higher MIQ fee than what is currently prescribed in the Regulations. The proposed changes will make the employers and sponsoring agencies of critical workers liable for the MIQ fees.

1.2 Context

The Government's overall public health strategy in respect of the COVID-19 pandemic is elimination. The Ministry of Health (MOH) is the lead agency on the Government's elimination strategy.

MIQ plays a central role in preventing COVID-19 from entering the community through the border. MIQ is a complex system of MIQ facilities, personnel, information systems, and testing regimes that enable positive COVID-19 cases to be detected early after arrival to New Zealand and to be isolated from the community. There are significant costs associated with MIQ, and on 11 August 2020, the MIQ fees regime came into force to support the financial sustainability of the MIQ system.

New Zealand's economic response, led by The Treasury, is also a critical part of the Government's overall strategy in response to COVID-19. The economic response aims to cushion the financial blow to whānau and families, workers, businesses and communities from the impacts of COVID-19, position New Zealand for recovery; and reset and rebuild the New Zealand economy.

What is Managed Isolation and Quarantine?

- MIQ plays a central role in preventing COVID-19 from entering the community across the border. Since April 2020, over 63,000 people have stayed in MIQ. This includes managing over 260 imported COVID-19 cases and 200 cases from the community.¹

¹ Period 10 April – 28 October 2020

- All people arriving in New Zealand by air are required to stay in MIQ facilities for at least 14 days with very limited exceptions. This is required by Orders made under the COVID-19 Public Health Response Act 2020.
- The current operational capacity of MIQ is 6,261.² There are 32 MIQ facilities located in Auckland, Hamilton, Rotorua, Wellington and Christchurch. MIQ capacity is constrained by the type of facilities used and health system capacity, which limits its scalability.
- Some form of MIQ system will likely need to be maintained at least until the New Zealand border fully reopens. Evidence suggests that New Zealand's borders are unlikely to fully open until late 2021/early 2022, with possible further delays if a vaccine roll-out is slower or proves less effective than anticipated.
- A mix of public sector agencies (MOH, District Health Boards (DHBs), New Zealand Defence Force (NZDF), Aviation Security Service (AvSec), New Zealand Customs Service (Customs), New Zealand Police (Police) and Immigration New Zealand) and contracted service providers (management, security and food services) support the management of the MIQ facilities and provision of wrap-around health and welfare services for people during their stay. Hotels have been key partners since April, with individual contracts put in place by MOH as additional supply was required.

Commercial Information

Fees for MIQ

- On 11 August 2020, the MIQ fees regime came into force to support the financial sustainability of the MIQ system. New Zealanders who enter temporarily, or who leave New Zealand after the regime came into force are now charged (although full or partial waivers are available). Temporary visa holders have to pay, unless they left New Zealand on or before 19 March 2020, and were ordinarily resident in New Zealand as of 19 March 2020. All critical workers entering New Zealand are liable for charges. Section 2.1 sets out the MIQ fees settings in greater detail.
- The proposed amendments to the MIQ fees settings will only directly impact the border class exception of 'other critical workers'. The proposed changes will not affect New Zealand citizens or permanent residents returning to New Zealand or under other eligible visas (for example students or critical health workers).

² Operational capacity refers to the number of people we can isolate in facilities at one time, taking into account rooms for cleaning, quarantine, air crew, transit passengers, deportees and a contingency to cover emergencies.

Key facts and figures

CURRENT CAPACITY



6,261
operational capacity*



32 facilities



5 regional
locations

PEOPLE MANAGED THROUGH MIQ



63,273
returnees



268 imported
COVID-19 cases



200
community cases

OPERATIONS



More than
4,000 staff

THE MANAGED ISOLATION ALLOCATION SYSTEM (MIAS)



27,018
allocations secured



17,769
vouchers



38,926
registrations

EXEMPTIONS



2,560
applications received



345
approved



1,370
declined

FEES



1,264
invoices sent



404
waivers approved



78 invoices paid
\$246,621
recovered

Note: All data is dated 28 October 2020 except for Fees which is 18 October 2020; Effective capacity is the number of people we can isolate in facilities at one time, taking into account rooms for cleaning, quarantine, air crew, transit passengers, deportees and a contingency to cover emergencies; MIAS is only accepting bookings for the next three months (approximately to the end of January 2021).

1.3 Limitations or Constraints on Analysis

Time constraints and other decision-making limitations

The Minister of COVID-19 Response with the agreement of Cabinet, sought to amend the Regulations before Christmas 2020 with the regulatory changes to come into force on 1 January 2021.

Due to the fast tracking of the proposed amendments to the Regulations, MBIE is limited in its ability to fully consider the wide-ranging issues with the MIQ fees system and pursue standard policy development and regulatory process.

The following limitations have been identified as a result of this work being progressed at pace:

- (1) we are unable to identify the full range of options for setting a fee amount because we do not yet know the full costs associated with operating MIQ (this is discussed further below)
- (2) we were unable to proceed with standard policy and regulatory development processes which gave rise to the following challenges:
 - limited consultation with other Government agencies on the proposed regulations;
 - limited consultation with affected parties and the public;
 - waiver of the 28-day rule for implementing regulatory changes (discussed in Section 4.1); and
 - unable to undergo a standard regulatory impact analysis to inform policy decisions – instead this Supplementary Analysis Report is provided to support final decisions made at Cabinet approving the proposed amendments to the Regulations.
- (3) MBIE officials were also unable to address the complexities of the industries and persons impacted and potentially impacted by the proposed changes (this will be discussed later in Section 4).

Quality and absence of data

There are gaps in the MBIE-MIQ database that have limited our ability to provide a fuller impact analysis of the proposed changes to the Regulations. These data issues exist because there are several data systems that are utilised across the MIQ system and are currently not integrated. The key data issues are outlined below:

- The Immigration system established in March 2020 to receive requests for border exceptions in response to the New Zealand border closure were solutions built quickly with basic capabilities and limited reporting. It is not possible to distinguish between critical workers' purposes of traveling to New Zealand through the current system.
- The Managed Isolation Allocation System (MIAS) does not currently require a person to enter their immigration status or visa details.
- Prior to 10 August 2020, the specific reason that someone requested a critical purpose visa was not captured. Nor was there any automatic link, at the back end of the IT systems, between an approved Expression of Interest (EOI) and the downstream visa application or request for a variation of conditions.

- Some data entry errors occur due to the manual elements of visa lodgement and processing. This means that the number of approvals against the reason for approval is likely being under reported.

The data limitations mean we are unable to:

- determine from immigration data the skills of critical workers or the industries they plan to work in. It is also not possible to determine how many of these critical workers had job offers. Due to these gaps in the data it is difficult to project the impacts of the proposed fees increase on an industry by industry basis.
- identify the proportion of critical workers that make up the total MIQ allocation making it difficult to indicate the likely revenue generated as a result of the proposed approach – this is discussed later in the report..

MBIE is working with MIQ partner agencies to address the limitations around information and data sharing via a type of information-sharing agreement. This will be also be covered in MBIE's wider review of the fees system.

Constrained by legislative requirements to explore all options for cost recovery

We are limited in our ability to recover full costs of MIQ because of the need to balance people's rights to enter New Zealand under the New Zealand Bill of Rights Act 1990 (BORA) and the Immigration Act 2009.

In general, increasing the fees charged to people returning to New Zealand via MIQ may increase the financial burden on families and individuals already facing potentially challenging circumstances. Balancing the rights of people to return to New Zealand underpins the current prescribed fee of \$2,696 + GST for the first occupant in a MIF room.

The option to increase the fees for people returning to New Zealand (within the existing regulations) is currently not an option being considered and this will impact our ability to recover fuller costs of MIQ across the fees system. This remains a key constraint in the proposed approach to address the problems outlined in Section 2.

Sarah Davies

Policy Director, MIQ

021-848-154

sarah.davies2@mbie.govt.nz

Quality Assurance Reviewing Agency:

Chaired by Treasury, panel members from Ministry of Business, innovation and Employment

Quality Assurance Assessment:

Partially meets

Reviewer Comments and Recommendations:

No Regulatory Impact Statement (RIS) accompanied this proposal when it was introduced to the Cabinet. Pursuant to the Cabinet's impact analysis requirements, the Ministry for Business, Innovation and Employment (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.

Due to time constraints, there has been limited engagement with public and industry stakeholders on increasing the fees for recognized seasonal employers (RSE) and critical workers in managed isolation and quarantine (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.

Section 2: Problem definition and objectives

2.1 What is the current state within which the action is proposed?

MIQ plays a central role in preventing COVID-19 from entering the community through the border. MIQ is a complex system of accommodation facilities, personnel, information systems, and testing regimes that enable positive COVID-19 cases to be detected early after arrival to New Zealand and to be isolated from the community. There are significant costs associated with MIQ, and on 11 August 2020, the MIQ fees regime came into force to support the financial sustainability of the MIQ system.

Legal framework of the MIQ fees system

The COVID-19 Public Health Response Act 2020 (the Act) also sets out the requirements for cost recovery. Section 32C of the Act requires the responsible Minister is satisfied that:

- the prescribed charges recover from any class of persons no more than an estimate of the actual and reasonable MIQ facility costs incurred in relation to that class (including both direct and indirect costs); and
- 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
- the prescribed charges do not limit or are justified limits on the rights and freedoms in BORA.

Section 32D of the Act also provides for the methods that can be used to determine how MIQ fees may be recovered.

Under the Act, the charges must:

- relate to managed isolation and quarantine facilities costs (including direct and indirect costs)
- recover from any class of persons no more than an estimate of the actual and reasonable MIQ facility costs incurred in relation to that class (including both direct and indirect costs)
- ensure 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
- do not limit or are justified limits on the rights and freedoms in the New Zealand Bill of Rights Act 1990.

MIQ Fees Regulatory framework

On 11 August 2020, the MIQ fees regime came into force to support the financial sustainability of the MIQ system. The fees prescribed in the current Regulations are less than the total MIQ MBIE-related costs per person.

Amendments to the Act introduced the MIQ fees regime and established clear legal authority for MBIE to charge people entering New Zealand for the costs of their stay in MIQ.

The fees set out in the Regulations are:

- \$2,696 + GST (\$3,100³ including GST) for the first or only person in the room
- \$826 + GST (\$950 including GST) for an additional adult in the same room
- \$413 + GST (\$475 including GST) for an additional child (3-17 years) in the same room
- No charge for a child under three years old sharing a room.

People who are required to pay the managed isolation charge will receive an invoice after their departure from managed isolation and will generally have 90 days to pay.

Applications to waive fees are considered on a case-by-case basis. Waivers are available in cases of undue financial hardship or other special circumstances. Certain classes of people are exempt from charges altogether, for example, people entering New Zealand as part of a medical evacuation, or people entering New Zealand for the first time as a refugee, deportee or returning offender.

Who is currently liable for the MIQ fee?

Under current fees settings, the following persons, unless exempt, are liable for the prescribed fee of \$2,696 + GST:

- New Zealand citizens or residents⁴ that are currently overseas and return to New Zealand for a period of less than 90 days;
- New Zealand citizens or residents that leave New Zealand after the Regulations came into effect (11 August 2020) and return at a later date;
- Temporary entry class visa holders, unless they left New Zealand on or before 19 March 2020, and were ordinarily resident in New Zealand as of 19 March; or
- A person who has entered New Zealand on a border class exception as either a 'critical health worker' or 'other critical worker' in accordance with the immigration instructions.

Critical workers and critical health workers are liable for the prescribed MIQ fee

The New Zealand border is currently closed to most people except those citizens and residence class visa holders or those who come in as an exception to border restrictions. As outlined above, 'critical health workers' and 'other critical workers' are liable for the current prescribed MIQ fee of \$2,696 + GST.

The proposed approach will impact each group in different ways:

- critical workers and/or their employers and sponsoring agencies will be liable for the proposed fee (\$4,800 + GST); and
- critical health workers will be excluded from the proposed new fee and maintain liability for the current MIQ fee (\$2,696 + GST).

³ Some critical workers, like aircrew, are charged on a pro-rata basis - \$221 (including GST) per person per day.

⁴ '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.

Section 2.3 will set out how each group is affected by these changes and which industries, where possible, are likely to be impacted by the proposed approach.

Air crew and maritime crew also pay the prescribed MIQ fee

Air crew and maritime crew are not “critical workers” under the border exceptions. They are captured by the air and maritime border orders. Generally workers in these sectors are not required to stay for the full 14-days in MIQ so are charged on a pro-rata basis. This is because the nature of their work requires a short transit period and they are generally low risk (if workers are travelling on low risk routes as part of their job) or in the case of maritime workers can self-isolate on their vessels if unwell.

2.2 What is the policy problem or opportunity?

The policy and regulatory problems identified within the current fees settings are set out below:

(1) Opportunity to balance the costs shared between the Government and employers

The problem identified during the initial development of the Regulations was that the MIQ operating system is financially unsustainable. MBIE considers that more of the costs should be borne where they are created and that those that derive an economic benefit from MIQ should bear responsibility for funding it. On this basis critical workers or their employers should bear a substantial proportion of the cost of their use of MIQ.

Charging employers of critical workers for their use of MIQ could also support public acceptance of the MIQ system, which could seem to impose a high cost on taxpayers under current settings.

- Commercial Information
- MBIE plans to undergo further analysis to understand the fuller costs of MIQ, particularly those cost relevant to all Government agencies' involvement in MIQ but we are limited in our ability to do this now to inform the proposed amendments to the Regulations.

The MIQ fees system was introduced as a cost-sharing model in an attempt to recover some of the MIQ costs and to address the issue of financial unsustainability of MIQ. Under current settings the fees regime is expected to generate approximately \$8 million per month⁵. MBIE consider there is an opportunity to recover more through the proposed approach. As demonstrated in Section 4.1, an increase in revenue as a result of charging the workers a higher fee is expected.

The current prescribed fee (\$2,696 + GST) in the Regulations is less than the average weighted operating cost of MIQ per person (\$4,800 + GST) indicating a level of under recovery of cost of MIQ through the current fees settings. The fee was set at this level to avoid over-recovering and to ensure that the fee was not an unjustified limitation on people's right to return to New Zealand protected in BORA (as required under the Act).

Critical workers do not have a protected right in BORA to enter New Zealand. They are permitted to enter New Zealand because of the economic contribution they are able to make. While New Zealand as a whole benefits from the economic contribution migrants make, much of the immediate benefit brought by skilled migration accrues to employers and to the migrants themselves.

⁵ This figure is subject to the Assumptions listed in Section 4.1.

(2) Unintended consequence of development of the fees regulations

MBIE is not recovering as much from critical workers as we were prior to the Regulations

On 8 June 2020, Cabinet agreed that the costs of MIQ for “other essential workers” were to be paid by the employer, the sponsoring agency or the individual [CAB-20-MIN-0268]. Prior to the Regulations, 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). Chargeback is now primarily used only by air crew for their transit stay where there was a pre-existing contractual relationship with the hotel prior to the establishment of MIQ.

In addition to the absence of a legally enforceable requirement to pay, other issues with the chargeback process included a lack of visibility over who was paying and how much, and the potential for hotels to receive payment twice for the same stay in MIQ (as MBIE was relying on hotels not charging Government for the cost of accommodation or food that was invoiced to critical workers). The risk of double payment is limited as MIQ has operational control of all people entering the border and moving into a MIQ facility. This level of operational control allows us to identify those who will likely be paying by chargeback and amending our systems accordingly. Over time we have also been moving to a more consistent approach whereby payment for any transit stay is managed through an MBIE contract as part of our existing contractual arrangements with the hotels.

Although the introduction of the Regulations addressed issues with the chargeback process, it also brought about the unintended consequence of MBIE no longer being able to recover the fuller costs of critical workers’ stays in MIQ. In turn, this means that New Zealand taxpayers are currently subsidising the cost of businesses and employees to stay in MIQ.

(3) Current Regulations do not deliver on policy decisions due to drafting errors

There is no legal basis for making employers and sponsoring agents liable for MIQ fees

A consequence of the speed of policy development and drafting of the current Regulations, means the current Regulations do not reflect policy decisions made by Cabinet. For example, under current Regulations, MBIE does not have a legal basis to require employers or sponsoring agents of critical workers to pay the fees only individuals (though Cabinet’s and Ministers’ intentions were to charge employers directly).

Critical workers intended to be excluded from applying for a fees waiver

In August 2020, Cabinet agreed that critical workers, including critical health workers, would not be able to apply for a fee waiver [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.

In practice, few waiver applications have been received from critical workers, and most that have been received do not meet the special circumstances or undue financial hardship grounds. This is because their travel is discretionary, usually funded by their employer and, being employed, most critical workers cannot demonstrate undue financial hardship.

2.3 Who is affected and how?

This section will set out how the proposed changes will impact ‘critical workers’ and ‘critical health workers’. This section will also set out how these changes will impact their relevant sectors/industries.

Critical workers will be directly affected by the proposed changes

The proposed changes will only apply to critical workers, in accordance with the Immigration Instructions, and their family entering New Zealand on or after 1 January 2021 – when the Regulations come into force.

Critical workers will enter New Zealand for a range of purposes. These are set out in the Immigration Instructions – this is also set out in Table 1. The table also sets out the range of industries/projects and employees within those industries/projects that may be impacted by the proposed changes.

Table 1: Examples of critical workers and reasons for travel to New Zealand under current Immigration settings

Reasons why critical workers may be required to come to New Zealand (as per the Immigration instructions ⁶)	Examples of types of workers (as approved class border exceptions)
Has unique experience and technical or specialist skills that are not obtainable in New Zealand.	<ul style="list-style-type: none"> • Recognised Seasonal Employer (RSE) workers (horticulture and viticulture industry) • Deepwater fishing crew • Agricultural mobile plant operators • Mixed and large animal veterinarian
Is essential for the delivery of an approved major infrastructure project.	<ul style="list-style-type: none"> • Workers required for the new Dunedin Hospital Campus – Southern DHB • Workers required for the City Centre to Māngere Light Rail - Auckland • Workers required for SH1 Improvements - Papakura to Bombay.
Is essential for the delivery of a government approved event.	<ul style="list-style-type: none"> • Rugby World Cup (Women’s)
Is essential for the delivery of a major government-approved programme.	<ul style="list-style-type: none"> • Rocket Lab launches • Pacific Leadership Development Programme (Defence programme)

At this stage, due to the data limitations, time constraints and limited consultation, it is difficult to project the impact of the proposed changes on critical workers, their employers/sponsoring agencies or the industries they work in (the data limitations are described in the Limitations Section).

⁶ Immigration NZ: H5.30 Definitions (02/11/2020) at: <https://www.immigration.govt.nz/opsmanual/74567.htm>

Further to this, while there have been announcements by the Government on some class border exceptions for critical workers (including those listed in the above table), we do not have granular information at this time on the number of critical workers, the employers involved and the exact timing of arrival to know the impact of proposed changes on the different groups and industries.

For example, we know the horticulture and wine industries may likely be impacted by the proposed changes for critical workers as 2,000 RSE workers have been approved to enter New Zealand from January. The critical workers are expected to arrive between January and March next year.

Following the changes to regulations which will come into force on 1 January 2021, the employers of critical workers will be invoiced the full amount outlined in the Regulations (\$4800 + GST). There will also be provision for a reduced fee to be charged for a second adult in a room where a risk assessment has been completed and room sharing is acceptable (\$2600 + GST). For consistency with the existing prescribed fee structure, a child rate is also proposed (\$1400 + GST) so that critical workers travelling with accompanying family are not charged the full per person rate.

Operational challenges with invoicing employers and sponsoring agencies in advance

Managing invoicing and MIQ payment upfront may be challenging due to the large number of employers in some industries (like the horticulture and wine industry), and the fact that the risk assessment to allow for room sharing cannot be fully completed until arrival in New Zealand.

The Regulations provide 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. The operational approach MIQ takes will allow officials to report back to the responsible Ministers on the implementation of the increased fee, noting that there will likely be ongoing media interest in our approach to critical workers.

Critical workers who have already booked their travel to New Zealand will also be impacted by the fees changes if they enter after 1 January 2021

The proposed changes will apply to any critical workers and their families entering New Zealand on or after the date the Regulations come into force. This is consistent with the way the original fees Regulations were introduced. There will be a small proportion of critical workers who have already booked their place in the managed isolation allocation system before the amended Regulations come into force, however MBIE considers that a line in the sand is the fairest and practicable way of operationalising the changes.

Unfortunately, MBIE does not have comprehensive data on the employer of these critical workers or on the industries in which they expect to work. For this reason, it is difficult to predict what impact the fees will have on their employers or on the workers themselves.

It is possible that some critical workers not to migrate due to the higher fee that they or their employers are being asked to pay. However, compared to other migration-related costs, the additional fees are not high. MBIE does not expect that the fees will have a significant impact on migration under current fees settings.

Critical health workers are not affected by the proposed changes

A 'critical health worker' is defined in the immigration instructions and on the Immigration New Zealand website as a person in a role to deliver critical services in the health and disability sector starting before 31 March 2021.

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.

The term critical health workers encompasses workers in a variety of clinical and non-clinical roles, ranging from medical practitioners to medical technicians to home care and support workers. These workers are employed across the health and disability system. While a number of them are employed by DHBs, their employers can also be Non-Government Organisations, or private organisations such as General Practices, Pharmacies or Aged Residential Care providers. The range of work in the health and disability sector is outlined on Immigration New Zealand's website.⁷

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. MBIE has received feedback that MIQ fees have impacted their ability to recruit international health practitioners to New Zealand (e.g. rural General Practitioners).

Critical health workers will not be adversely impacted by the proposed approach, because the Regulations will expressly stipulate that they are excluded from the new fees for critical workers.

Following the amendments to the Regulations, MBIE will work with MOH (and relevant parties where possible) to consider whether expanding these changes to critical health workers could be appropriate in some circumstances.

2.4 What are the objectives sought in relation to the problems identified?

The objectives sought in relation to the problems outlined above are as follows, and the primary objective sought in relation to the proposal is:

- that the fees system balances the needs to recover the costs of MIQ with the rights of people to return to New Zealand.

The additional objectives are that the fees regime:

- recognises the critical role MIQ plays in the New Zealand Government's wider approach to COVID-19 and elimination of the virus, balanced against the enabling economic benefits of immigration of critical workers and ensuring that New Zealand citizens can exercise their legal right to enter the country.
- intends to ensure that those who derive economic benefit from skilled migration also bear a higher proportion of the cost of the MIQ system.
- balances the following needs: certainty; clarity; equitability; does not penalise users; and is simple and pragmatic where possible.

New Zealand's economic response, led by the Treasury, aims to cushion the financial blow to whānau and families, workers, businesses and communities from the impacts of COVID-19, position New Zealand for recovery; and reset and rebuild the New Zealand economy. MIQ

⁷ Immigration New Zealand 'Critical purpose reasons you can travel to New Zealand': <https://www.immigration.govt.nz/about-us/covid-19/border-closures-and-exceptions/critical-purpose-reasons-you-can-travel-to-new-zealand>

forms part of the New Zealand Government's wider approach to COVID-19. The fees regime reduces the COVID-19-related public health risks associated with short-term travel through disincentivising discretionary travel to and from New Zealand. The proposed fees charged do not amount to full cost recovery, or over-recovery.

The objectives are reflected in the criteria in Section 3.2.

Section 3: Options Identification

3.1 What is the preferred approach and what options are available to address the problem?

The MIQ fees system aims to support an economically sustainable public health response to COVID-19, whilst avoiding over-recovery, not causing unjustified limitation on the rights and freedoms of New Zealanders, not penalising users, and being clear and transparent about the costs involved in MIQ. The proposed changes set out below aim to address the problems identified in the previous section.

The preferred approach

The proposed amendments to the Regulations include:

1. make employers or supporting agencies of critical workers (border exception) liable for a higher MIQ fee, where appropriate;
2. set the fee for critical workers at \$4,800 +GST for the first occupant, \$2,600 + GST for the second adult and \$1,400 + GST for a dependent child three years and older for a 14 day stay in MIQ;
3. allow MBIE to require payment in advance from employers or supporting agencies before a critical worker's arrival in New Zealand where appropriate;
4. exclude critical health workers from being liable to pay the proposed new fee;
5. exclude critical workers from being eligible for a MIQ fees waiver (as per original Cabinet policy decision and omitted due to drafting errors).

Structure of this section

There are five key decisions being sought by Cabinet that will, subject to final decisions, involve amendments to the fees Regulations. The section of this report will address each of these decision points and assess them against the criteria of the key considerations for the MIQ fees system (outlined in the table below).

Key features of the MIQ fees system

The MIQ fees system - being part of our broader public health response - needs to be a fair, justified and proportionate response to COVID-19. The MIQ fees system should also be simple and clear about any costs that travellers and/or critical workers will incur before arrival in New Zealand. The key features of the MIQ fees system are set out in Table 2 (next page).

3.2 MIQ fees system criteria for assessing proposed approach

The MIQ fees system should....	so this means the regulations will ...
be clear and certain about the MIQ fee	be transparent and upfront about the cost that travellers and employers of critical workers will incur before they arrive in New Zealand
not have unjustified limitations (if any) on New Zealanders wishing to return home	have a minimum necessary restriction on New Zealanders' right to enter New Zealand under BORA and the Immigration Act 2009 – charges should be a proportionate limitation on rights necessary to manage the public health risks posed by COVID-19
avoid over-recovery	prescribe a fee that does not recover from any class of persons no more than an estimate of the actual and reasonable MIQ facility costs incurred in relation to that class
not penalise users or offset the cost of future users of the service	only require those who are liable to pay a fee that reflects no more than an estimate of the actual and reasonable MIQ facility costs incurred in relation to that class (including both direct and indirect costs) not impose any additional costs on the user as a result of non-payment or additional cost what is already prescribed in the Regulations
be simple and pragmatic where ever possible	be feasible to implement
Support an economically sustainable public health response to COVID-19	Balance the right of New Zealanders and permanent residents to enter New Zealand with the need to have an economically sustainable MIQ system

3.3 Assessment of Options

Decision 1: Make employers or supporting agencies of critical workers (border exception) liable for a higher MIQ fee, where appropriate

Should employers be liable to pay the MIQ fee?

Amending the Regulations to make employers and sponsoring agencies liable for MIQ fees will deliver on the policy decision made by Cabinet in August 2020 [LEG-20-MIN-0141 refers].

There are two main options to consider in making the employers or sponsoring agencies of critical workers liable for MIQ fees:

Option 1 (status quo): Maintain that individual critical workers are liable to pay MIQ fees

Option 2 (preferred option): Make employers or supporting agencies liable to pay MIQ fees (if there is no employer or supporting agency, the individual will be liable)

As set out in section 2.2, an unintended consequence of the quick development of the Regulations meant that the Government currently has no legal basis to require employers to pay the MIQ fees of their employees.

If employers are not made liable via the Regulations the liability of payment will remain with the individual worker. As employers or supporting agencies receive the direct benefits of bringing critical workers into the country, the Option 2 (preferred option) proposes to clarify in the Regulations that employers and supporting agencies of critical workers should be liable for the MIQ fees.

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, the preferred approach is to make the individual critical worker liable if there is no employer or supporting agency.

Should the MIQ fees for critical workers increase?

Increasing the MIQ fees will contribute to achieving the primary objective of the fees system to recover costs of MIQ. There are two main regulatory options to consider. These options are:

Option 1 (status quo): continue to charge critical workers the prescribed fee as set out in the current Regulations.

Option 2 (preferred option): charge employers and sponsoring agents of critical workers a higher fee than what is currently prescribed in the regulations.

In general, the higher the fee the more likely it is to meet the purpose of MIQ being more economically sustainable and the less the Crown would need to contribute towards the costs. Increasing fees to an appropriate level will balance the cost between the employer and Government for MIQ costs. Without higher fees set for employers and sponsoring agents of critical workers, the problems identified in section 2.2 will remain.

MBIE considers that employers and sponsoring agencies are in the position to cover these increased costs. Employers were already covering higher costs of managed isolation facilities before the introduction of the MIQ fees system in August 2020. MBIE does not consider that the fees increase will have a significant impact on skilled migration.

Decision 2: Determining an appropriate fee rate for charging employers and sponsoring agencies of critical workers

Determining an appropriate fee for charging critical workers requires compliance with the Act and the Regulations.

The options identified for charging critical workers via the Regulations are set out below:

Option 1 (status quo) – Maintain the fee charge of \$2,696 + GST for the first person as prescribed in the current Regulations

Option 2 (preferred option) – Charge critical workers' employers or sponsoring agent a fee of \$4,800 + GST for the first person

Option 1 (Status quo): \$2,696 + GST for the first person

The current prescribed fee of \$2,696 + GST is based off the accommodation and food cost only of the lowest-cost MIQ facility.

The rationale underpinning the current prescribed fee of \$2,696 + GST in the Regulations was also to ensure the MIQ charges are not an unjustified limitation on the rights of people to enter New Zealand under BORA and the Immigration Act 2009. These considerations do not work in the context of critical workers as they do not have a protected right under BORA to enter New Zealand and are primarily coming into New Zealand for economic and job-related reasons.

Option 2: \$4,800 + GST for the first occupant, with reduced rates for additional occupants where room sharing has been permitted by a risk assessment (in the case of large groups), or in the case of accompanying family.

Option 2 (the preferred option) proposes a fee of \$4,800 + GST for employers or sponsoring agents of critical workers.

Option 2 is based off the average weighted cost for a single person in MIQ for 14 days. The \$4,800 + GST fee reflects the weighted average MBIE-related costs of MIQ per person. \$2,600 + GST is the average weighted cost for a second adult in MIQ and \$1,400 + GST is the average weighted cost for a dependent child

There is a low risk of over-recovery with the proposed fee changes, as the proposed \$4,800 + GST will still be lower than the actual costs of a stay in MIQ. This is because the proposed fee does not include the costs for MIQ services provided by partner agencies or other additional reasonable costs. Additionally, we would not look to charge or recover Health costs at this stage as COVID-19 is a Notifiable Infectious Disease under the Health Act 1956. A person who has, or is suspected of having, an infectious or notifiable disease is eligible to receive those publicly funded services specified in clause B23 of the Health and Disability Services Eligibility Direction 2011.

As such, the average weighted cost still includes a degree of subsidisation by the government.

Table 3: Option 1 (Status quo): Current fees as prescribed in the Regulations

Option 1 (Status quo): Current Fees in Regulations			
	First adult cost	Second adult cost	Child cost (50% of second adult)
Hotel Facility			
Transport			
Operational Support			
Total	\$2,696	\$826	\$413
Incl GST	\$3,100	\$950	\$475

Table 4: Option 2 (Preferred option): Charging critical workers based on the weighted average cost of MBIE for MIQ, with reduced rates for room sharing where permitted

Option 2 (preferred option) – Charging critical workers based on the weighted average cost of MBIE for MIQ			
	First adult cost	Second adult cost	Child cost (50% of second adult)
Hotel Facility	\$3,432	\$1,233	\$588
Transport	\$256	\$256	\$256
Operational	\$517	\$517	\$259

Support	\$595	\$595	\$297
Total	\$4,800	\$2,600	\$1,400
Incl GST	\$5,520	\$2,990	\$1,610

How does the proposed option align with the criteria of cost recovery as set out in the Act?

There are a number of different combinations that could be used to set the level of MIQ fees. The approach used to calculate the proposed fee of \$4,800 + GST is consistent with the method requirements set out in Section 32D of the Act. In particular, the proposed fee amount in the Regulations:

- is a fixed charge that is based on the estimated actual and reasonable cost of MIQ (aligns with Section 32D(1)(a) and 32D(1)(b) of the Act); and
- determined by calculations that involve an averaging of costs (Section 32(D)(2)(a))

Table 5 – Criteria of cost recovery as set out in the Act

Criteria set out in Section 32C of the Act	How the proposed Regulations meet the criteria
“recovers from any class of persons no more than an estimate of the actual and reasonable MIQ facility costs incurred in relation to that class (including both direct and indirect costs)”	The proposed fee is based on the weighted average MBIE-related MIQ cost and because it does not include other MIQ partner agencies’ costs or additional actual and reasonable costs, the proposed fee is likely to be lower than the full actual costs of MIQ.
“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”	The MIQ fees waiver was established to ensure that fees do not present an unjustified barrier on the rights of New Zealand citizens and permanent residents to return to New Zealand. This provision does not apply to critical workers or their employers or sponsoring agents.
“the prescribed charges do not limit or are justified limits on the rights and freedoms in the New Zealand Bill of Rights Act 1990.”	the proposed fee does not affect people whose rights and freedoms are protected under BORA.

Decision 3: Requiring employers to pay in advance

Cabinet agreed that employers should pay MIQ fees in-advance of critical workers’ arrival to MIQ.

The options for timing of payment are:

Option 1 (status quo) – Employers and sponsoring agents will be issued an invoice once the critical workers leave MIQ

Option 2 – the Regulations require payment in-advance from all employers/sponsoring agencies of critical workers

Option 3 (preferred approach) – the Regulations give MBIE discretion on seeking advance payments from employers where possible

There are operational limitations to issuing invoices in advance which will make Option 2 (Cabinet's preference) difficult to implement. For example, it is difficult to identify incoming critical workers (and their employers or supporting agencies) who are not part of large groups approved as class exceptions so that they can be invoiced in advance. 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.

The preferred approach is Option 3. Option 3 will enable MBIE to implement Cabinet's decision where practically possible by provide flexibility to seek advance payment from large groups where practicable but maintain the standard process of MIQ payment from employers of individual workers.

Decision 4: Excluding critical health workers from the higher fee

The two main options for in the Regulations are:

Option 1 (Status Quo): Make critical health workers liable for the higher fee of \$4,800 + GST

Option 2 (Preferred option to implement original Cabinet decision): Explicitly exclude critical health workers from paying the higher fee but continue to make them liable for the prescribed fee of \$2,696 + GST

Option 1 is the status quo (and does not exclude critical health workers). Option 1 involves charging critical health workers the same fee as proposed for all critical workers. This option will be the simpler option for charging all critical workers one single rate. Given the issues regarding critical health workers outlined in section 1.2, a blanket approach, as proposed by Option 1, to charging employers of critical workers a higher fee in the Regulations may have some unintended consequences for critical health workers.

MBIE notes that the resurgence of COVID-19 in the community may require the need for critical health workers to enter New Zealand quickly. Charging for MIQ may have impacts on the health workforce, and our ability to quickly scale up resources if required.

To minimise the potential impact on critical health workers with proposed Regulations, MBIE considers the best approach is to exempt critical health workers entirely from being liable to pay the proposed fee of \$4,800 + GST in the upcoming regulatory changes (as proposed by Option 2) and they will maintain liability in paying the current prescribed fee of \$2,696 + GST.

We will work with MOH to understand the full implications of potentially increasing the fee, in the future, on this wide-ranging critical health workforce, including identifying mechanisms like fee waivers or subsidies. This is to ensure that health sector objectives are met, and take into account the interests and circumstances of the wide range of critical health workers as discussed above.

Decision 5: Explicitly exclude critical workers from being eligible for fees waivers (as per original Cabinet policy decision and omitted due to drafting error)

Under the current Regulations, full or partial MIQ fees waivers are available in cases of undue financial hardship or other special circumstances. This decision centres on the need to implement the original Cabinet decisions on excluding critical workers from being eligible for fees waivers, and therefore addresses an omission in the Regulations.

This mechanism was established 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. As mentioned previously, these considerations do not apply to critical workers.

There are two options to consider:

Option 1 (status quo): Employers/sponsoring agencies and individual critical workers and critical health workers are eligible to apply for a fees waiver.

Option 2 (preferred approach to implement original Cabinet decision): Exclude all employers, sponsoring agencies and individual critical workers from applying for a fees waiver by removing their eligibility explicitly in the Regulations.

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. MBIE does not consider it appropriate for employers or business to be eligible to a fees waiver.

In practice, few waiver applications have been received from critical workers, and most that have been received do not meet the special circumstances or undue financial hardship grounds. This is because their travel is discretionary, usually funded by their employer and, being employed, most critical workers cannot demonstrate undue financial hardship. Option 1 will sustain the administrative burden on MIQ to process critical workers' applications for a fee waiver and will maintain workers' eligibility to apply for a fee waiver even when the waiver provision was not intended to serve this group.

Option 2 is the preferred option and will address the original Cabinet decisions on who is eligible to apply for fees waivers, and also address the issue that the omission creates administrative burden.

What other options have not been considered any why?

1. We could charge critical workers a higher fee through direct contract with employers

There are non-regulatory options to achieve the same outcome – but these options will give rise to feasibility and legal issues.

Charging higher fees for critical workers could also be achieved outside of the Regulations. MBIE can contract directly with employers or industry groups for class exemptions of critical workers (e.g. RSE workers), however, we have a legal requirement to provide additional services on top of those provided to people who enter MIQ and pay the prescribed fee.

We have already made some bespoke arrangements with sports teams for fees **Confidential** **Confidential advice to Government**, this was based on the \$2,696 + GST as set currently in the Regulations and also additional wrap around services (like training facilities, specialist food and extra security).

It is not practicable to contract directly with employers of all critical workers who are not part of identifiable large groups and are arriving as individuals. Issuing separate contracts to all employers is administratively complex and comes with a high financial cost to establish and service these contracts. To charge the employers of all critical workers the higher fees, the Regulations will need to be amended.

2. We could require employers to pay via the Immigration Instructions

In the absence of regulatory changes, alternatively, employers and sponsoring agencies could be made liable for all critical workers' MIQ charges by amending immigration instructions to make it a visa condition. If a sponsoring employer does not comply with the visa condition, the fee becomes a debt recoverable to the Crown under the Immigration Act 2009.

The Immigration Instructions, however, could not be used to increase the fees charged for MIQ. These changes could still be pursued alongside the regulatory change but it would be complementary to the proposed regulations requiring employers or sponsoring agencies to meet the costs of MIQ via the fees regime.

3. We could likely charge critical workers higher fees based on the fuller costs of MIQ

With more time, there may have been an opportunity to work through all possible options for establishing a fee amount to charge critical workers. For example, the proposed fee is only based on MBIE-related costs and does not include Health costs or costs for other services provided by partner MIQ agencies, such as AvSec, Defence and Police. As such, the average weighted cost still includes a degree of subsidisation by the government. Identifying the costs beyond MBIE for MIQ would allow us to identify a fuller range of options for setting a fee for the proposal.

Section 4: Impact Analysis

4.1 Marginal impact: How does the proposed approach identified in section 3.1 compare with taking no action under each of the criteria set out in section 3.2?

	No action	Implement new regulatory changes
Fee certainty	0 not changing the fees regime provides greater certainty for system users, but does not resolve issues about who is liable to pay	0 the change will create uncertainty for system users, the new fees regime will need to be socialised. This is balanced by an improvement in clarity about who should pay
Rights of New Zealanders	- New Zealand tax payers currently bear much of the cost for non-New Zealanders passing through MIQ	++ the change will assist to ensure that the users of the MIQ system bear more of the cost of operating it
Avoid over recovery	+ the current fees regime does not over-recover, it under recovers	++ the new fees regime will not over-recover, but the under-recovery is reduced
Not penalise users	- the existing fees regime imposes a cost on (some) users	- the new fees regime will impose an increased cost on (some) users, this may impact on skilled migration
Simple and pragmatic	- the existing fees regime lacks clarity about who is liable to pay the cost of MIQ	+ the new fees regime will make it clearer that the people who benefit from the system should bear the cost of funding it
Overall assessment	-- The existing fees regime does not adequately meet criteria	++++ the proposed changes to the fees regime represent a significant improvement over the status quo

Key:

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

4.2 Benefits and Costs of the proposed approach

Summary of costs and benefits

The key benefits of the proposed approach are set out in the table below.

Table 3: Summary of costs and benefits

Benefits	Description / Measure
Cost recovery	Commercial Information
Ability to charge employers	Fees levied on those most able to pay, will reduce non-recovery of fees
User pays principal	Reduces the burden on the taxpayer, supports social licence to operate
Remove fees exemption for critical workers	Removes an administration cost
Costs	Description / Measure
Fees regime	Introduces different fees for different groups of migrants. Adds complexity and (potentially) perceptions of unfairness
Labour market	Possible impact on skilled migration

Monetised benefits

The proposed approach (assuming a 1.35 room occupancy rate) involves setting a lower level of subsidised fee for critical workers from \$2,696 + GST to \$4,800 + GST is expected to generate more revenue than the status quo. The monthly and six-month forecast of revenue comparing the proposed approach and status quo is highlighted below. The proposed changes will go part of the way towards ensuring that the costs of MIQ are borne by the activities that generate those costs. For multiple occupancy of no more than 2 adults there could be a reduced monetarised benefit however we have no accurate forecast to suggest the percentage of critical workers this would apply to.

Key messages

- Commercial Information
-
- Increasing MIQ fees for critical workers will generate more revenue than the status quo.
- The proposed approach will generate just over \$1.8 million more in revenue a month than the status quo – this is approximately \$10.8 million in six months.

Key assumptions (full list of assumptions outlined in Table 6)

- MIQ allocates up to 7% of available spaces to critical workers (excludes critical health workers). This is approximately 305 MIQ rooms at a packing rate of 1.35.
- The critical workers are charged on the following basis:
 - \$4,800 + GST for the first occupant,
 - \$2,600 + GST for the second adult; and
 - \$1,400 + GST for a dependent child three years and older
- Other returnees (New Zealand citizens, residents, critical health workers, maritime and air crew) are charged the prescribed rate of \$2,696 + GST.

Forecast for MBIE-related MIQ cost and revenue generated through fees system

Commercial Information

Six-month forecast (Table 5)

Commercial Information

- Under the current fees settings, the MIQ fees system will generate \$56.40 million of revenue over six months. The proposed fee will generate \$67.1 million in revenue over six months.
- Based on the key assumptions set out below in table 6, the proposed approach will generate approximately an additional \$10.8 million than the status quo over a six-month period.

Table 4: Estimated monthly revenue generated of fees regime against operating expenditure

Commercial Information

Table 5: Six-month forecast for MIQ revenue generated of fees regime against operating expenditure

Commercial Information



Table 6: Underlying assumptions for forecast revenue of MIQ fees system

Key underlying assumptions	Comments
<p>Occupancy rate The standard occupation rate of MIQ is 90%. (note the occupation rate for rooms reserved for operational and cleaning purposes is 25%, for quarantine and deportees is 60%)</p>	<p>The occupancy rate is the percentage of occupied rooms in MIQ at a given time. The higher the occupancy rate the lower the cost per person (total cost/returnees) as a large proportion of MIQ running costs are fixed.</p>
<p>Packing rate The packing rate is 1.35.</p>	<p>This means, at a given time there are 1.35 people per room across MIQ.</p>
<p>Expected credit loss (ECL) The rate of expected credit loss is 30%.</p>	<p>This expected credit loss represents the estimated percentage of non-payments of the fees. It's difficult to provide actual percentage as the first payments were only just due on 27 November.</p>
<p>Concession rate The concession rate is 15.10%</p>	<p>There is no interest charged on the MIQ fee regime, and would therefore be considered "below market terms" and not at fair value. The concession rate adjusts the loan to an estimated fair value.</p>
<p>Total number of rooms in MIQ 6,201</p>	<p>The total number of rooms in MIQ is 6,201</p>
<p>Room allocation (for returnees and workers)</p> <ul style="list-style-type: none"> • 3,263 for MIAS online – New Zealand citizens and residents • 305 for critical workers (7% of critical of MIQ allocation) • 131 for critical health workers • 653 for MIAS online – buffer • 150 for emergency allocation • 122 for maritime and aircrew 	<p>This is the expected allocation for different groups of returnees and critical workers across MIQ.</p>

Key underlying assumptions	Comments
<p>Room allocation (for other purposes)</p> <ul style="list-style-type: none"> • 933 (operational reserve) • 348 for quarantine purposes • 32 for deportees • 266 (for administrative purposes) 	<p>This is the expected allocation of MIQ rooms that will not be used for returnees or critical workers.</p>
<p>Exemption rate</p> <ul style="list-style-type: none"> • The rate of exemption from fees is 78% • The rate of exemption from fees is 0% for critical workers, maritime and aircrew. 	<p>The exemption rate accounts for people who have either been exempt from paying the MIQ fees or those who have been granted a fee waiver. The exemption rate applies differently across classes of people returning to New Zealand.</p>
<p>No fee</p> <p>Besides from those exempt from MIQ fee through the exemption and/or fee waiver process. The fee regime does not apply to the following:</p> <ul style="list-style-type: none"> • people required to quarantine from the community • deportees returning to New Zealand • rooms used for administrative purposes 	<p>The Government will bear the cost of the rooms for the purposes of quarantine, housing deportees and for administrative purposes.</p>

Labour market impacts of the proposed approach (noting the border limitations under COVID-19 and the broader labour market impacts as a result)

The increase in MIQ fees will impose an additional cost on migrants who meet the critical worker criteria and are seeking to enter New Zealand. The impact is likely to be greater for critical workers who do not yet have a confirmed employer to pay their fees. Noting the current strict conditions to be able to enter New Zealand we expect that this will affect a small number of people and the labour market impact in these cases would be minimal.

For employers needing to bring in critical workers to meet immediate skill shortages the cost will be well socialised and will be offset by the immediate benefits they get from bringing a migrant into New Zealand to fill this gap.

Non-monetised benefits of the proposed approach

The primary non-monetary benefit of the proposed approach is that it will fulfil Cabinet's original policy intent of:

- enabling the ability to make employers of critical workers directly liable for their employees' stays in MIQ [CAB-20-MIN-0268 refers]; and
- excluding critical workers from being able to apply for a fees waiver [LEG-20-MIN-0141 refers].

Due to the speed of drafting, these elements were not reflected in the initial Regulations.

There are risks involved in the proposed approach

Risk of deterrence from critical workers in industries with skills/technical shortage

The key considerations with the proposed requirement to charge employers and sponsoring agents to pay a higher fee than what is currently prescribed is it may deter critical workers from entering New Zealand. This could have a negative impact on industries that rely on unique experience and technical or specialist skills that can only be obtained from foreign nationals and where New Zealand's labour market has a shortage.

Issue of parity and fairness across between workers

There is a risk that introducing higher MIQ fees for critical workers, but not for critical health workers or other groups similar to critical workers (such as students, air and maritime crew), creates an inconsistent fees system, and will have a disproportionate impact on small and medium-sized enterprises, particularly given that critical workers also bring benefits to the wider economy.

The proposed approach could give rise to parity issues about how the Government charges different groups of workers. In summary,

- Critical workers will be required to pay the proposed fee of \$4,800 + GST for the first occupant
- Critical health workers will remain liable for the prescribed fee of \$2,696 + GST
- Aircrew and maritime crew (not critical workers) will also remain liable for the prescribed fee of \$2,696 + GST.

Additionally, the approach to charging the second tranche of deep water fishing crew is not consistent with how the first tranche were charged.

Consistency with other groups that are not critical workers needs to be considered, but there are a range of interests and complexities that require consideration to ensure the right outcomes. As directed by the Minister for COVID-19 Response, MBIE will explore these issues further with relevant agencies and stakeholders and consider whether the charge applied to critical workers can also be applied to other similar groups entering the country.

Perception of over recovery

There is significant variation in the costs of providing MIQ depending on the standard of the facility involved. This variable standard, combined with a higher but flat fee for critical workers, may generate complaints from employers of critical workers that they are paying too much for a facility which is below the average standard. This is only a perception risk - we are very confident that the proposed fee structure will not over recover, given that costs of non-MBIE services are not included.

Operational challenges

The proposed option could also create an administrative burden on the processing and operationalisation of the fees invoicing and distinguishing between classes of workers who are eligible for the higher fee and those who are not.

Waiver of 28-day rule

It is a requirement of Cabinet that regulations must not come into force until at least 28 days after they have been notified in the New Zealand Gazette. The 28-day rule reflects the principle that the law should be publicly available and capable of being ascertained before it comes into force.

A waiver of the 28-day rule is sought so the proposed 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 or 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 fee settings are in place for RSE workers and able to be charged in advance of their arrival.

These changes will apply to any critical workers and their families entering New Zealand on or after the date the Regulations come into force. This is consistent with the way the original fees Regulations were introduced. There will be a small proportion of critical workers who have already booked their place in MIAS before the amended Regulations come into force, however MBIE considers that a line in the sand is the most fair and practicable way of operationalising the changes.

Risks of not making the proposed changes

The costs associated with operating the MIQ system are high. The proposed changes will make a small contribution to increasing the sustainability of the MIQ system. This will assist the Government's finances and support the economic recovery. These benefits will be lost if the fees increase does not occur.

The Government's approach to managing COVID-19 has relied strongly on a social licence to operate. Not requiring full cost recovery for non-New Zealanders who use the MIQ system carries the risk of undermining public acceptance of the COVID-19 response. MBIE considers that the fee increase will improve the optics of the COVID-19 response.

Section 5: Conclusion

5.1 Summary

We judge that that best option for addressing the problems identified in section 2.2 whilst meeting the policy objectives of the MIQ fees regime, is to amend the Regulations to:

1. make employers or supporting agencies of critical workers (border exception) liable for a higher MIQ fee, where appropriate;
2. set the fee for critical workers at \$4,800 + GST for a 14 day stay in MIQ;
3. Allow for a charge of \$2,600 + GST for a second adult and \$1,400 for a dependent child three years and older for a 14 day stay in MIQ, where room sharing has been permitted;
4. allow MBIE to require payment in advance from employers or supporting agencies before a critical worker's arrival in New Zealand where appropriate;
5. exempt/exclude critical health workers from being liable to pay the proposed new fee; and
6. exclude critical workers and critical health workers from being eligible for a MIQ fee waiver.

Amending the Regulations to make employers or sponsoring agencies liable for critical workers' MIQ stays, where appropriate (1) could be achieved in some cases through non-regulatory means, by contracting directly with employers outside of the fees Regulations. However the contracting option can only be used to recover additional services provided on top of the Regulations, which would not be a given in the case of every critical worker. Also, it would be operationally complex and highly resource intensive to recover MIQ costs through contracts with employers or industry groups of all critical workers.

The Government has committed to increasing the number and range of critical workers entering the country. An alternative to increasing the critical worker charge in the Regulations to \$4,800 + GST per person would be to keep the fees charge for critical workers at the status quo (\$2,696 + GST). However this alternative would reduce the fiscal headroom that could be used to support the economic recovery. Under (2), the government would continue to subsidise MIQ for critical workers entering New Zealand, however the proposed fee would better balance the employer's contribution alongside the government's contribution and allow more increase recovery of MIQ costs. Under (5), the preferred option addresses the original Cabinet policy decision (and omitted due to a drafting error).

Allowing MBIE to require payment in advance of a critical worker's arrival in New Zealand, where appropriate (3) supports an economically sustainable public health response to COVID-19. We have not identified a practicable mechanism to achieve this outside of amendments to the Regulations.

Confidence in assumptions / evidence

As noted in section 1.2, there are gaps in the information we currently hold about the MIQ model, including the costs of services provided by MIQ partner agencies (such as NZDF and AvSec), and numbers of critical workers expected to enter New Zealand in the coming months.

We have confidence, however, in the MBIE costs required to support the MIQ network, and it is these (average weighted) costs which underpin the proposed higher fee for critical workers of \$4,800 + GST per person.

Consultation and stakeholder views

Although it was publically known that the Government was considering increasing the MIQ fees for critical workers, we were limited in our ability to fully consult with relevant industry representatives, employers/sponsoring agencies and critical workers.

Relevant Government agencies are informed of the proposed changes to the fees Regulations, however, consultation with Government agencies on the specific proposal was limited. We have attempted to identify some of the key issues conveyed by specific agencies as part of our wider work in the MIQ fees space. These have been set out below:

Some of the issues raised by MOH related to the complexities of the critical health workforce – including the absence of an employer and/or sponsoring agency or the difficulties in employers meeting MIQ costs. We had limited time and resource to work with MOH to consider how these complexities could be addressed through this round of amendments to the Regulations. This will be part of MBIE’s consideration and review of MIQ fees following the amendments.

The key issues raised by the Ministry of Transport related to the shipping and aviation sectors – specifically how fee changes could impact air crew and maritime crew. The proposed changes do not directly affect these sectors or these workers. However, consideration to these sectors will be made in due course.

In addition to the agencies above, MBIE, Immigration New Zealand, Department of the Prime Minister and Cabinet, the Treasury, the Ministry of Justice, Ministry of Primary Industries and Ministry of Foreign Affairs and Trade have been consulted on these changes.

Consideration of BORA and Treaty of Waitangi implications

The current model for MIQ, including the fees regime, places limitations on rights guaranteed by BORA and has Treaty of Waitangi implications in that fees could place an impediment on access of Māori to New Zealand. The limitations the current MIQ model imposes on rights have previously been considered justified on the basis that the objective of protecting the public health of New Zealand from COVID-19 is sufficiently important, and that the MIQ model is rationally connected to that objective, is proportionate and goes no further than is reasonably necessary.

The proposed amendments to the Regulations do not have implications for Māori returning home to New Zealand, as they would not be entering under the critical worker class exception. They could however have implications for Māori employers bringing critical workers into the country, as the proposed amendments would make them liable for the higher MIQ fees.

Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

The preferred option will be given effect through amendments to the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020.

The proposed Regulations will come into force on 1 January 2021.

On 27 November 2020, the Ministers of Immigration and Agriculture announced higher fees and that employers would pay in relation to recognised seasonal employer workers, who Cabinet approved as a critical worker class exception in November 2020.

The Minister for COVID-19 Response will announce the amendments to the Regulations for all critical workers on the day the amendments are made.

MBIE administers the Regulations and has responsibility for implementing the fees regime.

MIAS (the booking system for MIQ) is being enhanced to ensure the immigration status of people entering MIQ can be identified (e.g. that they are critical workers). Improvements are also being made to how information is shared between MIQ and Immigration New Zealand. However, these improvements are not expected to come into effect until February 2021.

In the interim, MIQ will need to rely on people self-identifying as critical workers to charge them a higher fee. We note it is easier to manage large groups of critical workers coming in as class exceptions – for those critical workers MBIE and Immigration New Zealand will set up a process with industry bodies to identify who will be entering MIQ and when as well as who will be liable to pay.

Section 7: Monitoring, evaluation and review

7.1 How will the new arrangements work in practice?

MBIE is planning a broader review of the MIQ cost recovery system to ensure it aligns with the Government's objectives, including fees as one option. We expect to commence this work early in 2021. By this point the fees regime will have been operating for nearly six months and we will be well placed to consider how it is delivering on policy objectives.

At this stage we expect the review will broadly cover:

- the purpose and objectives of MIQ cost recovery (including whether the objectives have shifted since the introduction of the fees system)
- a survey of international approaches to MIQ cost recovery
- other models of cost recovery (in addition to fees) that could be appropriate for MIQ
- who should be eligible for MIQ costs and how much they should pay
- eligibility for exemptions and waivers
- invoicing and operational matters
- the overarching legislative and regulatory framework for MIQ cost recovery.