

# Coversheet: Legislative Framework for Managed Isolation and Quarantine

Advising agencies	<i>Ministry of Business, Innovation and Employment (MBIE) – Managed Isolation and Quarantine Unit</i>
Decision sought	<i>Approve preferred options for inclusion in 2021 Amendment Bill to the COVID-19 Public Health Response Act 2020</i>
Proposing Ministers	<i>Minister for COVID-19 Response</i>

## Summary Section A: Problem and proposed approach

### Problem Definition

Public health is the primary aim of managed isolation and quarantine (MIQ). However, except for cost recovery, there are no express provisions in primary legislation for the orderly operation of MIQ, and limited empowering provisions for delegated legislation.

Without express legislative provisions, many vital MIQ considerations are left to the general law and operational decisions, leaving the legal basis for MIQ fragmented.

The orders issued under sections 9, 10 and 11 of the *COVID-19 Public Health Response Act 2020* (Orders, the Act) that provide much of the basis for MIQ's role are primarily concerned with public health and transmission of COVID-19, rather than considerations such as the health and safety of workers or resourcing constraints. While still secondary to the public health objective of MIQ, without adequate consideration they threaten MIQ's ability to reach that objective. This lack of consideration, combined with a fragmented legal basis, poses challenges to the administrative efficiency of MIQ.

Key challenges that result from these issues include:

- a. reduced transparency and accountability, which runs contrary to principles of good law (particularly relevant in a system based on voluntary compliance, and which needs to justify its restrictions on human rights), and potential for inconsistent decision making
- b. increased risk of legal challenge
- c. insufficient ability to enforce rules and requirements
- d. administrative inefficiency resulting from unclear boundaries to each power and factors in decision making

Instituting specific legislative provisions for the operation of MIQ would help address these issues. Beyond the benefits to the legitimacy of the law, greater certainty and quicker decision-making would benefit people who seek to enter, and have entered, MIQ. Ultimately, more efficient and effective operating processes will also benefit the general public by reducing the risk around the spread of COVID-19.

## Summary of Preferred Options

The proposed approach overall is to introduce provisions in primary legislation that enable the following:

- a. **Managing demand for places in MIQ** – include powers in the Act for the Minister to determine the framework for issuing managed isolation allocations and the Chief Executive of MBIE to manage the allocation of managed isolation places in accordance with Ministerial decisions, shifting the existing powers in the Isolation and Quarantine Order.
- b. **Reversing fee liability** – reverse the liability of MIQ fees so that by default all people undertaking managed isolation or quarantine (or their supporting agencies) are liable, unless they are exempt.
- c. **Managing movement** – include a power in the Act for the Chief Executive of MBIE to direct, impose conditions on, and restrict movement to, from and within MIQ facilities, with particular focus on room restrictions. This power would apply to people undertaking managed isolation or quarantine and other people onsite who enter an MIQ facility, such as authorised services or unauthorised people attempting to enter.
- d. **Managing day-to-day operations** – include a power in the Act for the Chief Executive of MBIE to create rules for the day-to-day operation of MIQ facilities, such as restricting, prohibiting and imposing conditions on what things can be brought into facilities, including mail, deliveries and alcohol.
- e. **Dealing with complaints** – include a requirement in the Act for a complaints process to be in place, but without prescribing the details of the process.
- f. **Collecting information to support invoicing** – include a requirement in the Act for people undertaking MIQ to provide MBIE with contact information so that MBIE is able to contact them once they have left MIQ, for such invoicing purposes.

The proposed approach does not include provision for **assuring the quality of processes within MIQ facilities, or of the facilities themselves**. Instead, the preferred approach is to continue with the existing combination of statutory (eg Ombudsman) and non-statutory review processes.

Note that these are not new policies. Instead, the focus of these proposals is shifting their legislative basis from general law and secondary legislation into the Act. The intent is to ensure MIQ functions are transparent, relevant accountabilities are clearer, and restrictions on peoples' rights are justified, by rendering the MIQ system subject to Parliamentary scrutiny. Whilst other broad regulatory alternatives were briefly considered, the scale of the issue at hand (that being a global pandemic) necessitates direct regulation to serve these ends.

## Summary Section B: Impacts, benefits and costs

### Who are the main expected beneficiaries and what is the nature of the expected benefit?

The problems these proposals intend to address are fundamentally problems of good law rather than policy. The policies themselves are already largely in place in some form. However, because the policies are not explicitly provided for, substantial work has been required to implement them and amend them over time than would have been the case with explicit provision.

The primary benefit, therefore, is the cumulative gain to operational efficiency, legal certainty, transparency and accountability of the MIQ system.

**Where do the costs fall?**

Costs of the proposals are limited. People who undertake MIQ will be legally required to provide information for the purposes of invoicing, and this has implications for their rights. However, we note that the people who will be invoiced as a result of this data collection were already legally required to pay for MIQ, but could not be charged due to insufficient power to enforce the requirement to provide information for such a purpose.

**Risks, unintended impacts and mitigation**

Given the pace of change in the COVID-19 response, there is a risk that the use of primary legislation provides inadequate flexibility. However, reviews are frequent and proposals are expected to use secondary legislation as much as possible to maximise flexibility.

The reversing fee liability proposal will change one of the underpinning concepts of the cost recovery section of the Act, meaning that once in force the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 will become unenforceable. A parallel process of reviewing the fees regime and Regulations is currently underway, but if issues should arise in producing new Regulations at the same time as the Bill commences, there are mechanisms to provide for flexibility. For example, the fee liability amendments in the Act could be activated later, perhaps through Order in Council.

## Summary Section C: Evidence certainty and quality assurance

**Agency rating of evidence certainty?**

Evidence certainty is high – these are primarily problems of a fragmented legislative system, and the policies themselves are in place. Direct, tangible changes as a result of these proposals will be minimal.

*To be completed by quality assurers:*

<b>Quality Assurance Reviewing Agency:</b>
MBIE and MOH
<b>Quality Assurance Assessment:</b>
Partially meets
<b>Reviewer Comments and Recommendations:</b>
The RIS is Clear, Concise and Complete.
It is important to note that this RIS was prepared at some haste and consulting outside of government is not feasible. This means that the RIS partially meets the Quality Assurance criteria due to limitations on it being fully consulted (for all options).

# Impact Statement: Legislative Framework for Managed Isolation and Quarantine

## Section 1: General information

### 1.1 Purpose

- 1.1.1 The Ministry of Business, Innovation and Employment's (MBIE's) Managed Isolation and Quarantine (MIQ) Unit is solely responsible for the analysis and advice set out in this Regulatory Impact Statement (RIS), except as otherwise explicitly indicated. This analysis and advice has been produced to inform key policy decisions to be taken by Cabinet regarding a proposed 2021 amendment Bill (the Bill) to the *COVID-19 Public Health Response Act 2020* (the Act).

### 1.2 Key Limitations or Constraints on Analysis

#### Process constraints

- 1.2.1 The scale and severity of the COVID-19 pandemic, and the resulting processes under which these policies need to be developed, has imposed a number of constraints on this analysis. These constraints are:
- Lack of modern precedent:** the lack of recent precedent for a pandemic of this scale means that there is limited previous policy or institutional knowledge to draw from.
  - Shifting foundations:** our increasing knowledge of the COVID-19 virus, and the evolution of new variants of it, mean that the regulatory system needs to be flexible so that it can adapt.
  - Time constraints:** changes must be made quickly, constricting time available for analysis and consultation. One result of this is the lack of non-government consultation undertaken on these proposals.

#### Content constraints

- 1.2.2 The changes proposed in this RIS are part of a package of changes that constitute the Bill. The other proposals, led by the Ministry of Health, are discussed separately in a companion RIS and therefore have not been discussed in detail here, although cross-references are made when appropriate.
- 1.2.3 There are also several MIQ-specific factors that have been explicitly excluded from this analysis:
- Non-legislative options:** non-regulatory, self-regulatory and co-regulatory options have not been considered. The scale of the pandemic necessitates direct regulation to serve the ends sought by these proposals – that being to ensure MIQ functions are transparent, relevant accountabilities are clearer, and restrictions on peoples' rights are justified.
  - Future pandemics:** the intent of these proposals is not to establish a system that can be used directly for future pandemics, should they occur. Instead, they are intended only to provide the necessary durability to operate the MIQ system while New Zealand's borders are restricted as a result of the COVID-19 pandemic.

- c. **Supply of MIQ facilities:** this matter is out of scope of the Bill due to its complexity and controversy, and the limited time available to develop these proposals.
- d. **Allocation to particular MIQ facilities or rooms:** The processes for allocating people to, and within, particular places of isolation and quarantine (facilities or otherwise) are out of scope, as they are catered for adequately within the existing secondary legislation powers.
- e. **Changes to fee regulations:** Changes to the fees regulations are the subject of another work programme. While one of the proposals in this RIS relates to reversing default liability for MIQ fees, any changes to the exemptions themselves (ie, who will not be charged) will be part of the separate fees review programme.

### 1.3 Responsible Manager (signature and date)

Nora Burghart

Implementation Policy

Managed Isolation and Quarantine

Ministry of Business, Innovation and Employment

6 May 2021

## Section 2: Problem definition and objectives

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

#### There is a global pandemic

- 2.1.1 New Zealand has thus far been successful in reducing the impact of the COVID-19 pandemic, suffering few deaths per capita and able to pursue a strategy of eliminating the disease, rather than simply trying to “flatten the curve” and limit its impact.
- 2.1.2 As of late February 2021, global cases of COVID-19 exceeded 110 million and reported deaths were 2.4 million (estimated to reach 3.4 to 3.8 million by June 2021).<sup>1</sup> After the first wave of infections in the first half of 2020, new strains that are more transmissible have caused resurgences impacting many countries, notably the United Kingdom, the United States of America, Brazil and South Africa.

#### Vaccination is underway

- 2.1.3 While the rollout of vaccination programmes has raised hope that the peak of the pandemic may be over, as we see positive reduction in R values<sup>2</sup> worldwide, COVID-19 is very likely to be a prevalent public health concern for months, if not years, to come.
- 2.1.4 Vaccines developed to date do not appear to prevent infected people from being infectious, although by reducing/eliminating symptoms, transmission is reduced.
- 2.1.5 This is particularly important in New Zealand, where there is no herd immunity, and the relaxing of border controls is likely to see an increase in cases, despite global vaccination efforts.

#### The role of MIQ

- 2.1.6 New Zealand has adopted a [COVID-19 Elimination Strategy](#). Its purpose is to prevent cases of COVID-19 entering New Zealand while being ready to quickly eliminate any chains of transmission in the community. It has four pillars:
- a. KEEP IT OUT - pre-departure testing and border controls, managed isolation and quarantine.
  - b. PREPARE FOR IT - robust case detection and surveillance; and public health measures.
  - c. STAMP IT OUT - effective contact tracing and case management; and the stronger public health measures (Alert Levels 2-4).
  - d. MANAGE THE IMPACT - health system readiness and resilience, including delivery of COVID-19 vaccines.
- 2.1.7 MIQ forms part of the first of these pillars. Its purpose is to protect the health of people in New Zealand by preventing COVID-19 from entering the community via people entering the country.

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<sup>1</sup> More update to date statistics can be found at following World Health Organisation website which provides a *Daily COVID-19 Dashboard* of the impacts of the pandemic: <https://covid19.who.int/table>

<sup>2</sup> In epidemiology, an R value refers to the basic reproduction number of an infection, representing the number of new infections generated by one infection in the population with no intervention.

## 2.2 What regulatory system(s) are already in place?

### Initial COVID-19 response

- 2.2.1 On 25 March 2020, the Prime Minister of New Zealand issued the [Epidemic Preparedness \(COVID-19\) Notice 2020](#), pursuant to section 5 of the [Epidemic Preparedness Act 2006](#), declaring that the effects of the outbreak of COVID-19 were likely to disrupt or continue to disrupt essential governmental and business activity in New Zealand significantly. This notice provided the ‘trigger’ for the response actions taken to eliminate COVID-19.
- 2.2.2 The [Health Act 1956](#), the [Epidemic Preparedness Act 2006](#), and the [Civil Defence Emergency Management Act 2002](#) were also used for the initial responses to COVID-19, and the operational arrangements for MIQ were stood up urgently as part of the emergency all-of-government response in April 2020.
- 2.2.3 The Ministry of Health is the lead agency for the COVID-19 health response. MBIE has operational responsibility for MIQ, relying on the Ministry of Health for public health advice and the support of multiple agencies to ensure the effective operation of the MIQ system.

### COVID-19 Public Health Response Act 2020

- 2.2.4 Despite the relative success of the initial responses to COVID-19 under the aforementioned Acts, there were clearly ambiguities and weaknesses that arose from such a complex use of laws. The Government decided as a matter of urgency to fast-track a new law to improve the response by having it managed under one Act.
- 2.2.5 The [COVID-19 Public Health Response Act 2020](#) (the Act) provides the legal framework for addressing the COVID-19 pandemic and delivering the Government’s COVID-19 Elimination Strategy. The Act allows the Minister for COVID-19 Response (or the Director-General of Health in specified circumstances) to make Orders that contribute or are likely to contribute to preventing the risk of the outbreak or spread of COVID-19. It received assent on 13 May 2020.
- 2.2.6 Orders made under the Act are primarily concerned with public health and the transmission risk of COVID-19. There are six primary Orders made under the Act to support the public health response to COVID-19. They are:
- a. [Alert Level Requirements Order](#) - specifying the Alert Level that applies at any given time to a given area, and what is, or is not, acceptable activity;
  - b. [Air Border Order](#) (ABO) - placing requirements on persons arriving by air, including to be tested on arrival and commence isolation or quarantine as soon as practicable after arrival;
  - c. [Maritime Border Order](#) (MBO) – restricting which ships can arrive in New Zealand and continuing isolation and quarantine requirements for people who arrive in New Zealand by sea;
  - d. [Isolation and Quarantine Order](#) (IQO) – setting requirements for people in managed isolation and quarantine and requirements for self-isolation by particular workers (e.g. New Zealand based air crew);
  - e. [Required Testing Order](#) – requiring specific border workers to get tested for COVID-19 regularly; and



- f. [Vaccination Order](#) – requiring specified work related to MIQ facilities or the border to be undertaken by vaccinated individuals.

2.2.7 The Act was amended on 6 August 2020 to enable social, economic, and other factors to be considered where relevant and to provide for the recovery of MIQ costs. It was further amended on 7 December 2020 to provide for pragmatic Ministerial administration and ensure key Ministers are consulted over COVID-19 Orders, and to allow for the dispensation of the 48-hour notice requirement when removing Alert Level restrictions.

## 2.3 What is the policy problem or opportunity?

### MIQ has evolved into a complex and critical part of the COVID-19 response

- 2.3.1 When the Act came into force in April 2020, MIQ had only been operating for five weeks. It was not known at that time how critical MIQ would continue to be to the COVID-19 response, how long it would be required for, and how complex the system would become. The MIQ system has faced significant and sustained pressure, and growing demand, since its initial establishment.
- 2.3.2 MIQ has now been operating for just over a year and has evolved into a complex system of 32 facilities operating in a dynamic global pandemic environment. It has accommodated over 125,000 people arriving in New Zealand.
- 2.3.3 Over half a dozen government agencies work closely together, alongside private commercial accommodation and other service providers, to deliver MIQ. There are also significant interdependencies with the Defence, Immigration, Transport, Customs, Police, Foreign Affairs and Economic Development systems.
- 2.3.4 MIQ has taken a continuous improvement approach. Its operations have evolved over the last year as we learn more about the virus and how to manage it. This approach has involved the development of operational frameworks and guidance to support consistency, and ongoing processes to review the effectiveness and compliance of MIQ operations.
- 2.3.5 As the global situation continues on an unpredictable path, including vaccination rollout and the emergence of new variants, it is likely that MIQ will continue to play a critical role in New Zealand's response to COVID-19 for some time.

### There are additional factors relevant for MIQ to achieve its objective

- 2.3.6 MIQ is first and foremost a public health response. But as the system has developed, it has become clear that the effective functioning of MIQ would sometimes benefit from other considerations being given greater weight in the day-to-day delivery of managed isolation and quarantine services.
- 2.3.7 The key aspects of the MIQ system are:
  - a. **Managing the MIQ system** – this includes managing sustained demand for MIQ places from people seeking to enter New Zealand, and managing cost recovery. Also relevant to the system but out of scope of this RIS are funding and supply of MIQ facilities.
  - b. **Managing what happens within MIQ** – this includes managing the movements of people undertaking isolation or quarantine and day-to-day



operational decisions such as what people can bring into and use in MIQ facilities.

- c. **Providing assurance and enforcement** – operating with a high degree of assurance around operational processes, and resolving complaints.

2.3.8 These aspects of the MIQ operation involve considerations about the health and safety of workers and residents in our facilities, balancing the rights of people undertaking isolation or quarantine, and operational and resourcing implications. These are broader than the immediate public health considerations.

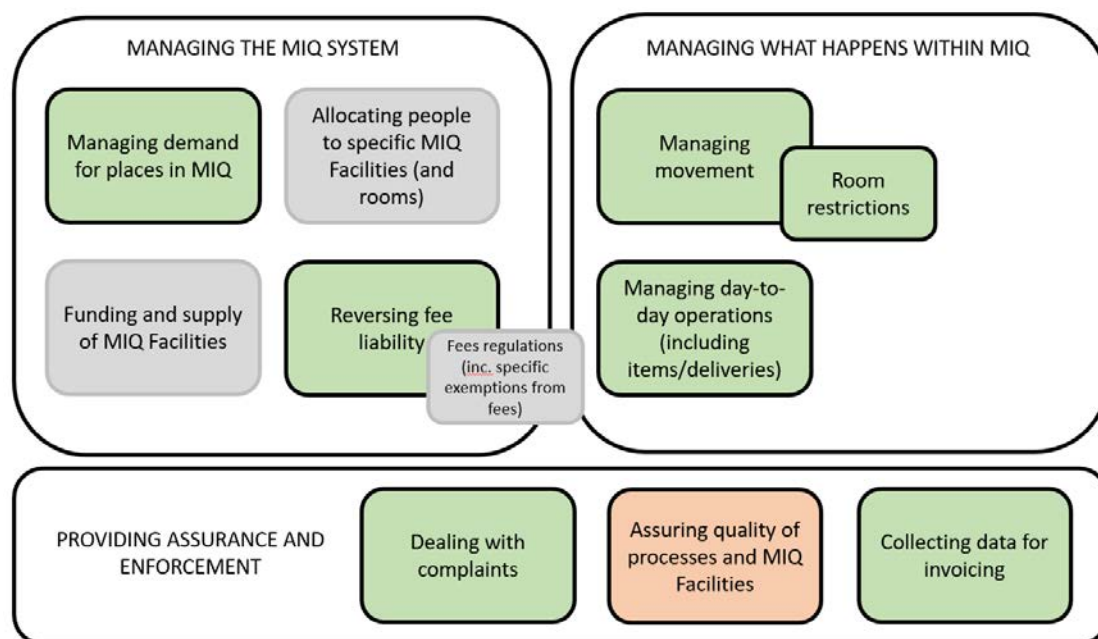


Figure 1: key aspects of the MIQ system. Green indicates a recommended change, orange no recommended change, grey is out of scope of this review

**There is no clear framework in the Act for MIQ**

2.3.9 The Act does not include express provisions in primary legislation for the orderly operation of MIQ (other than for cost recovery) and has limited empowering provisions for delegated legislation to be made to achieve this. The Orders made under the Act are primarily concerned with public health and transmission of COVID-19, rather than the broader considerations relevant to the operation of MIQ.

2.3.10 This means MIQ is governed by a mixture of Orders made under the Act, operational decisions and reliance on the general law, such as the [New Zealand Bill of Rights Act 1990](#) (NZBORA) and the [Health and Safety at Work Act 2015](#) (HSWA), and common law principles such as natural justice.

2.3.11 Under such a system, there is no clear direction to consider factors such as human rights, health and safety and operational resourcing, despite the fact that these factors are vital to achieve the primary public health aim of MIQ. These issues result in the following:

- a. reduced transparency and accountability, which runs contrary to principles of good administrative law (particularly relevant in a system based on voluntary compliance, and which needs to justify its restrictions on human rights), and potential for inconsistent decision making.
- b. increased risk of legal challenge

- c. insufficient ability to enforce rules and requirements
- d. administrative inefficiency resulting from unclear boundaries to each power and factors in decision making

2.3.12 Whilst these issues are system-wide, there are specific, contributing matters to be addressed. Individual problem definitions are discussed for each of the proposals in Section 3: Analysis.

## 2.4 What do stakeholders think about the problem?

2.4.1 The table below sets out categories of stakeholders affected by these issues. Note that we have not undertaken any consultation at this stage, but we expect engagement will be undertaken through the Select Committee process. This is primarily due to two factors:

- a. The ongoing importance of MIQ means that it is a priority to ensure that these changes are in place as soon as possible.
- b. We consider that many of these changes will be abstract - for the most part the changes are clarifying the legal basis for policies that already exist. The exception to this is the change to the default setting for fee liability, which, although in and of itself will not impact on stakeholders, may (in conjunction with future potential changes to the charges Regulations) result in future impacts.

Stakeholder	Interest
Stakeholders identified in the rows below, in addition to: <ul style="list-style-type: none"> <li>• New Zealanders and visa holders in New Zealand who are not leaving or returning to New Zealand</li> <li>• Businesses in New Zealand</li> </ul>	<ul style="list-style-type: none"> <li>• A well-functioning MIQ system, not only to reduce the health risks of COVID-19 entering the community but also to mitigate the social and economic impact of public health measures</li> <li>• Transparent and enforceable 'good law'</li> <li>• Administrative efficiency of system</li> </ul>
New Zealanders or visa holders travelling to New Zealand and joining MIQ	<ul style="list-style-type: none"> <li>• Individual rights are protected while in isolation or quarantine</li> </ul>
Workers at MIQ facilities and their families	<ul style="list-style-type: none"> <li>• A workplace that is able to ensure their health and safety, not only from COVID-19 but also other risks</li> </ul>

## 2.5 What are the objectives sought in relation to the identified problem?

- 2.5.1 The objective is to create a transparent legislative framework for MIQ that:
- a. enables MIQ to fulfil its purpose of limiting the risk of spread or outbreak of COVID-19 in MIQ facilities, and therefore entering New Zealand through the border
  - b. takes social, economic and other impacts relevant to the operation of MIQ into account
  - c. ensures workers and people staying in facilities are kept healthy and safe
  - d. ensures restrictions on people's rights are justified
  - e. encourages compliance and is enforceable.

## Section 3: Analysis

### 3.1 Overview

#### How options were decided

- 3.1.1 There are two primary decisions that apply across the options analysed in this section:
- Who makes the decisions and exercises powers
  - Whether the power and related factors should be prescribed in primary or secondary legislation.
- 3.1.2 Aside from option one, which is always the status quo, the options are numbered according to flexibility – flexibility is reduced as numbers ascend ie option three will be less flexible than option two, either as a result of a change to the decision maker, requirements as to how those decisions are made, or whether it is made in primary or secondary legislation.
- 3.1.3 No options have been specifically ruled out of scope. However, when developing options we have considered the practicality of each. For example, entirely prescribing heavily administrative decisions like what can be brought into an MIQ facility in primary legislation is not operationally feasible and so is not included.

#### What criteria, in addition to monetary costs and benefits have been used to assess the likely impacts of the options under consideration?

- 3.1.4 We used four criteria to evaluate these proposals:
- Effectiveness** – able to achieve the objectives of MIQ (as set out above) and thereby provide collective benefit to New Zealand. This criteria includes enforceability.
  - Proportionality** – there are limited restrictions on individual rights and appropriate safeguards.
  - Durability** – flexible to respond to and develop in changing COVID-19 environment.
  - Transparency** – it is clear what the rules are, and when, how and whom they apply to; it is clear who decision makers are, how they make their decisions.
- 3.1.5 There are trade-offs to be made between these criteria. For example, effectiveness and durability (a and c) are likely to run into conflict with proportionality (b).
- 3.1.6 Two further criteria were considered, due to their importance in the MIQ system and decision making within it, but were ultimately excluded:
- Accountability**, as this is achieved through a combination of ensuring that the right decision-maker is in place (determined through balancing criteria a, b and d) and ensuring transparency.
  - Fairness**, as it does not assist in distinguishing between or analysing the options being considered, which are about who decision makers are and whether their powers are set out in primary or secondary legislation.

3.1.7 In the analysis tables for each section below, the performance of each option against these four criteria is graded using the below key:

++	much better than the status quo	0	about the same as the status quo	-	worse than the status quo
+	better than the status quo			--	much worse than the status quo

## 3.2 Managing demand for places in MIQ

### Problem definition

- 3.2.1 Managing supply and demand is one of the key parts of MIQ's operations. Including a power in primary legislation for the Chief Executive of MBIE to allocate and prioritise MIQ places, subject to appropriate decision-making criteria and safeguards would provide a sound legal footing for this process.
- 3.2.2 An amendment to the IQO is underway and is expected to come into force in April 2021. The amendment will allow a proportion of allocable places in MIQ to be ring-fenced for New Zealanders with the remainder accessed on a first-come-first-serve basis.
- 3.2.3 However, allocation decisions affect the right of New Zealand citizens and permanent residents to enter New Zealand under NZBORA, either by restricting the total number of people who can enter, or by ring fencing MIQ spaces for certain people needed for economic and social reasons, which also has a similar effect for the citizens who cannot use those spaces.

### Proposal and options:

- 3.2.4 MBIE needs to manage the demand for places in MIQ, including powers to:
- operate the MIAS system (online bookings)
  - operate offline bookings
  - prioritise places
  - allocate places.
- 3.2.5 Three options have been identified:
- Under **Option one (the status quo)** the IQO explicitly sets out the powers and responsibilities of the Minister and the CE of MBIE. The Minister is responsible for deciding the size of allocations and decision-making criteria, while the CE of MBIE makes individual decisions and is responsible for the operation of the system.
  - Option two (preferred option)** is largely the same as the status quo, with one difference – the Act establishes the powers and responsibilities of the Minister and the CE of MBIE.
  - Option three** is based on option two, but assigns the power to decide the size of allocations and determine decision-making criteria to Cabinet/the Governor-General (i.e. through regulations) rather than the Minister alone.
- 3.2.6 Option two is the preferred option of these, as it will give the most explicit and transparent basis of the powers, will undergo parliamentary scrutiny and also retains flexibility for the

changing environment. The following table sets out the analysis of the three options against the criteria set out in section 3.1.4.

	Option One: Status quo – powers in Orders, Minister and CE decision makers	Option Two (preferred option): Act establishes powers (otherwise same as status quo)	Option Three: Act establishes powers, and Cabinet decides proportions of allocations
<b>Effectiveness</b> Able to achieve the objectives of MIQ	0	+	+
<b>Proportionality</b> Provides safeguards on restrictions to rights	0	+	+
<b>Durability</b> Provides operational flexibility in changing environment	0	-	--
<b>Transparency</b> Clear what the rules are, when they apply and who makes decisions	0	0	0
<b>Overall assessment</b>	0	++	+
		By improving administrative efficiency and reducing legal risk of challenge, the MIQ system is more secure and voluntary compliance is supported	By improving administrative efficiency and reducing legal risk of challenge, the MIQ system is more secure and voluntary compliance is supported
		Parliamentary delegation of powers (rather than ministerial) adds a safeguard	Parliamentary delegation of powers (rather than ministerial) adds a safeguard
		Using primary legislation rather than Orders reduces flexibility	By having Cabinet assume the role currently filled by the Minister, there is less flexibility to respond quickly. Primary legislation is also less flexible than using the Orders
		There would be minimum impact on transparency	There would be minimum impact on transparency
		More effective and with better safeguards than the status quo, while retaining necessary flexibility to respond quickly	While more effective and with better safeguards than the status quo, flexibility is too limited by requiring Cabinet to approve changes to apportionment of allocations

### 3.3 Reversing fee liability

#### Problem definition

- 3.3.1 At the time the cost recovery provisions of the COVID-19 Act and the MIQ Charges Regulations were made, New Zealand's border restrictions were very tight. The majority of people arriving were New Zealanders returning home, and otherwise only a few critical purpose visa holders (e.g. critical workers) were being permitted entry. It was also uncertain at that time how long MIQ would be required and what the ongoing cost to government would be.
- 3.3.2 This context meant that the Act and the Regulations were designed so that groups of people must be specified in the Regulations for charges to apply, although both the Act and Regulations also set out categories of people who are exempt. This means the general rule is that charges do not apply unless they are a specified person in the Regulations. Every time a new border exception is proposed, the Regulations have to be reviewed and in many cases amended to ensure the new group is liable for MIQ charges (where that is the

intention). To date, the regulations have already been revised twice since they were first introduced in August 2020:

- a. In December 2020, Cabinet agreed to set a higher fee for ‘other critical workers’, to make employers or supporting agencies liable for critical workers’ MIQ costs where appropriate, and remove the ability of critical workers to apply for a fees waiver [CBC-20-MIN-0136]. These amendments came into effect on 1 January 2021.
- b. In March 2021, Cabinet agreed to further amendments to the Regulations to ensure that temporary visa holders are liable to pay fees, and that this group (with the exception of air and maritime crew) be charged the higher fee [CAB-21-MIN-0016]. These amendments came into force on 25 March 2021. As part of these decisions, Cabinet also agreed that from 1 June 2021, returning New Zealanders must remain in the country for more than 180 days to not be liable for MIQ fees, changing from the current 90-day timeframe.

3.3.3 As New Zealand’s borders open, immigration settings are likely to allow new categories of people to enter the country. Under the existing framework, changes to immigration settings are likely to require new regulations, or at least work to confirm that no changes are required. This approach is administratively burdensome and inefficient.

**Proposed power and options:**

3.3.4 MBIE seeks to change the liability principle of the Act, so that people undertaking managed isolation or quarantine are liable for fees by default unless they are exempt.

3.3.5 Two options have been identified for this proposal:

- a. Under **Option One (status quo)**, the Act has a section on cost recovery which sets out how costs can be considered and collected, but the starting point is that people only have to pay if they are specified in the regulations. Regulations can be made, including the ability to prescribe classes of people who must pay fees and under what circumstances. Both the Act and Regulations set out exemptions, and there are provisions to allow the Minister and Chief Executive of MBIE to waive fees under certain circumstances, although only the latter has been activated by the Regulations.
- b. **Option Two (preferred option)** would invert the liability principle of option one so the starting point is that that everyone (or their supporting agency) is liable to pay fees, unless they are exempt.

3.3.6 Option two is the preferred option because of the impact on administrative efficiency as the border restrictions loosen, as is set out in the following table which shows analysis of the two options against the criteria set out in section 3.1.4.

	Option One: Status quo	Option Two (preferred option): liability for fees unless exempt
<b>Effectiveness</b> Able to achieve the objectives of MIQ	0	0 No change to cost recovery: decisions on who will be charged will still be addressed in the regulations
<b>Proportionality</b> Provides safeguards on restrictions to rights	0	0 No change to individual rights: decisions on who will be charged will still be addressed in the regulations



	Option One: Status quo	Option Two (preferred option): liability for fees unless exempt
<b>Durability</b> Provides operational flexibility in changing environment	0	++ Fewer updates to the regulations would be required to in order to maintain the policy's intent when borders open and other policies are changed
<b>Transparency</b> Clear what the rules are, when they apply and who makes decisions	0	0 There would be minimum impact on transparency
<b>Overall assessment</b>	0	+ Significantly more durable than the status quo, while retaining flexibility

### 3.4 Managing movement

#### Problem definition

##### *Managing movement generally*

- 3.4.1 Managing people's movements to, from and within facilities is a key part of ensuring the health and safety of those undertaking isolation and quarantine and workers in MIQ. This applies to both people undertaking managed isolation or quarantine and other people onsite who enter an MIQ facility such as other people authorised to enter or unauthorised people attempting to enter.
- 3.4.2 The Chief Executive of MBIE has powers to manage people's movement to facilities from their point of arrival, from facilities (for early departures) and within facilities (authorisation to leave rooms, which can also include temporarily leaving the facility for reasons such as exercise). This is set in the IQO, ABO and MBO, made under section 11 of the Act.
- 3.4.3 The Orders do not generally provide express criteria for the Chief Executive to take into account when making these decisions. In some cases, the advice of a Medical Officer of Health must be sought.
- 3.4.4 In the absence of express decision-making criteria, the Chief Executive takes into account the risk of spread or outbreak of COVID-19, which is the purpose of the Act and section 11 Orders, and any other relevant purposes of the Act such as ensuring an orderly, coordinated and proportionate response.
- 3.4.5 The Chief Executive also has obligations under HSWA to ensure, so far as is reasonably practicable, the health and safety of its workers and other workers onsite, and that the health and safety of other persons is not put at risk from work carried out by MBIE MIQ. These obligations are broader than COVID-19 transmission risk.
- 3.4.6 The Chief Executive also has obligations under NZBORA. Any restrictions on peoples' movement must be proportionate and justified. In the case of people undertaking managed isolation or quarantine, access to exercise and fresh air are fundamental to their wellbeing and respecting their right to be treated with dignity and respect under NZBORA. However, there are sometimes practical constraints to operationalising these rights in facilities that, if not well managed, can impact MIQ's ability to achieve its overall public health objective.



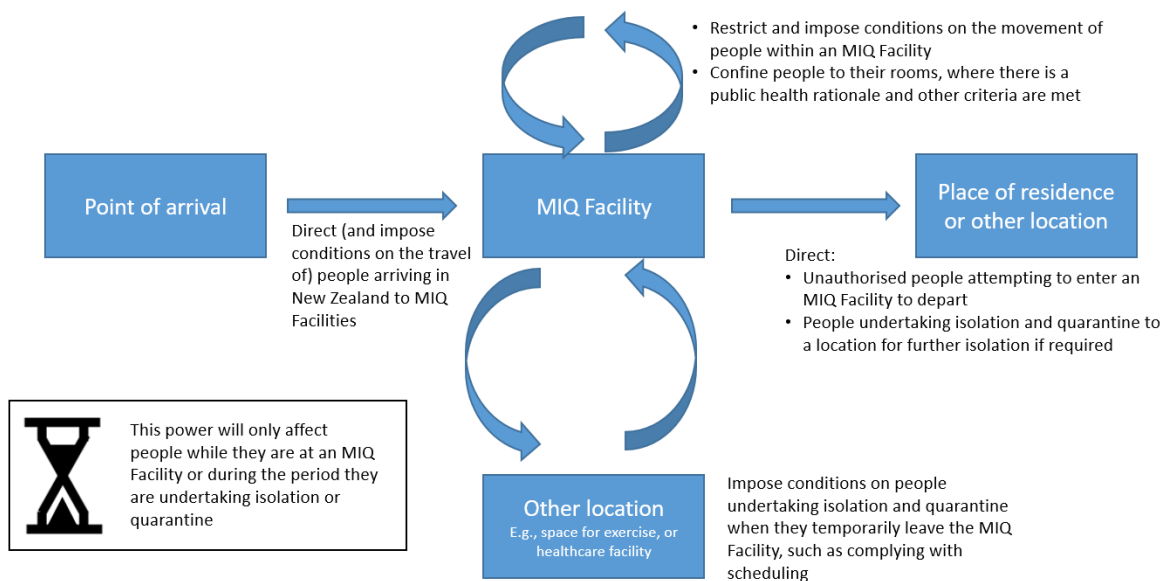
3.4.7 While the general law provides a basis for these additional factors to be considered alongside public health, it does not reflect the complexities and nuances involved in the MIQ regime. Currently Orders cannot expressly reflect these broader considerations because section 11 is so tightly linked to COVID-19 transmission risk.

*Room restrictions*

3.4.8 As a last resort to uncertain or emerging situations such as new variants or incident response (e.g. to the Pullman case), it is sometimes necessary to keep people in their rooms. Under the Orders, people undertaking isolation or quarantine are required to stay in their rooms except in specified circumstances or for activities authorised by the Chief Executive, for example access to fresh air and smoking breaks. Room restrictions have been imposed by the Chief Executive not authorising, or suspending authorisation of, activities. However, given the impact on people’s rights and wellbeing, it is preferable for this power to be clear in primary legislation and subject to express safeguards and decision-making criteria.

**Proposed power and options:**

3.4.9 The proposed power would include the ability to direct, restrict and apply conditions (such as complying with scheduled timing) on movement for people undertaking managed isolation or quarantine and other people onsite at MIQ facilities, for the duration of their time onsite or period of managed isolation or quarantine.



**Figure two: examples of how the managing movement power is intended to work**

3.4.10 Three options have been identified for this power:

- a. Under **Option One (status quo)**, the Isolation and Quarantine Order gives the CE of MBIE the power to direct travel and impose conditions on travel, authorise activities outside of a person’s room in a MIF, and allow someone to leave a MIF or join vulnerable people in an MIQ facility. It also gives site managers some operational powers (e.g. authorising access into MIQ facilities). The Director-General of Health approves the risk matrix for departing MIQ facilities. The Air Border Order and

Maritime Border Order largely reflect these powers in the context of aircrew and maritime crew.

- b. **Option Two** would use the Act to recognise the ability to restrict, direct and impose conditions on movement to, from and within MIQ facilities, including the ability to impose room restrictions.
- c. **Option Three (preferred option)** would build on option two, also including guiding principles of decision-making.

3.4.11 Option three is the preferred option due to the impact on people’s rights restrictions on movement have, and the greater transparency and effectiveness of including decision making criteria in primary legislation. This is set out in the following table which shows analysis of the three options against the criteria set out in section 3.1.4.

	Option One: Status quo	Option Two: Act authorises CE to manage movement	Option Three (preferred option): same as Option Two plus criteria on decision-making
<b>Effectiveness</b> Able to achieve the objectives of MIQ	0	+	++
<b>Proportionality</b> Provides safeguards on restrictions to rights	0	0	+
<b>Durability</b> Provides operational flexibility in changing environment	0	-	-
<b>Transparency</b> Clear what the rules are, when they apply and who makes decisions	0	+	++
<b>Overall assessment</b>	0	+	++

### 3.5 Managing day-to-day operations

#### Problem definition

- 3.5.1 Managing the day-to-day operations of facilities, including what and when deliveries can be received within facilities is a key part of ensuring the health and safety of people undertaking managed isolation and quarantine and workers in MIQ.
- 3.5.2 Dangerous or illegal items and excessive amounts of alcohol can put workers and others at risk. More generally deliveries need to be managed so they do not affect the effective functioning of MIQ or increase risk of transmission. MIQ facilities are in a unique situation to manage unwanted items because people undertaking isolation or quarantine are required

to be there by law; MIQ is not a normal accommodation facility where it could adopt a policy and if a person refused to comply, it could ask a person to leave. Further as MIQ is a public function, restrictions on people's access to things also have to be consistent with NZBORA.

- 3.5.3 MBIE has developed and implemented a policy to manage mail, deliveries and items, including an alcohol policy, based on its obligations under HSWA. This is generally operating well and most people comply with the policy. Any behavioural incidents that arise are dealt with through MIQ's incident and escalation process, and Police are involved where appropriate. However, there is limited ability to enforce the mail, delivery and alcohol policy pre-emptively, and the offences under HSWA are significant and unlikely to be charged.

#### Proposed power and options:

- 3.5.4 MBIE requires powers to manage the day-to-day operations of facilities, including what items can be brought into MIQ facilities and what items people undertaking isolation or quarantine can use, including:
- a. alcohol consumption
  - b. dangerous items
  - c. mail and deliveries.
- 3.5.5 In the case of deliveries, this applies to *what* people undertaking isolation or quarantine can bring in/receive, *when* they can receive or use the item and any *conditions* associated with receiving or using it. This could also serve to provide operational detail to the proposed powers to restrict movement of people undertaking isolation or quarantine e.g. rules about scheduling and booking exercise and smoking breaks.
- 3.5.6 Four options have been identified for this proposal:
- a. Under **Option One (status quo)**, managing day-to-day operations within MIQ facilities, outside of public health concerns, is currently done under HSWA and MBIE's obligation as a Person Conducting a Business or Undertaking (PCBU) to ensure so far as is reasonably practicable, the health and safety of workers and others affected by the work.
  - b. **Option Two** would use the Act to give the CE of MBIE the power to make rules about the day to day operation of MIQ facilities, including restricting or imposing conditions on where/when/if items could be received. All else would remain the same as the status quo.
  - c. **Option Three (preferred option)** would build on option two, also including guiding principles of decision-making for the CE, in addition to the power.
  - d. **Option Four** would resemble option three, but would grant that power to the Minister, rather than the CE of MBIE.
- 3.5.7 Of these, option three is the preferred option as it retains flexibility while safeguarding the rights of people in MIQ and improving administrative efficiency. Analysis of the four options against the criteria set out in section 3.1.4 is set out in the below table.

	Option One: Status quo	Option Two: Act authorises CE to create rules for considerations such as items and alcohol consumption	Option Three (preferred option): same as Option Two plus criteria on decision-making	Option Four: Act authorises Minister to prescribe how items dealt with in MIQ facilities
<b>Effectiveness</b> Able to achieve the objectives of MIQ	0	+	+	+
		By providing explicit authority for power with rights implications, improves effectiveness and efficiency of MIQ	By providing explicit authority for power with rights implications, improves effectiveness and efficiency of MIQ	By providing explicit authority for power with rights implications, improves effectiveness and efficiency of MIQ
<b>Proportionality</b> Provides safeguards on restrictions to rights	0	0	+	+
		No change to proportionality	Including criteria in decision making is a safeguard	Including criteria in decision making is a safeguard
<b>Durability</b> Provides operational flexibility in changing environment	0	0	0	-
		No change to flexibility	No change to flexibility	Ministerial rather than executive decision-making would be less flexible
<b>Transparency</b> Clear what the rules are, when they apply and who makes decisions	0	0	+	+
		No change to transparency	Explicitly stating the criteria taken into account would be more transparent	Explicitly stating the criteria taken into account would be more transparent
<b>Overall assessment</b>	0	+	++	+
		Slightly more effective than the status quo	Achieves objective and transparency while retaining operational flexibility	More effective and transparent but less flexible

### 3.6 Dealing with complaints and reviewing decisions

#### Problem definition

- 3.6.1 MBIE currently operates an administrative internal complaints process. This process is available to people undertaking managed isolation or quarantine when they raise a complaint with a Facility Manager or Wellbeing Coordinator, or through a complaints form on the MIQ website. MBIE MIQ's resolution team reviews complaints and decisions, and refers complaints where they are more appropriately handled by other organisations involved in the MIQ system such as the Ministry of Health, New Zealand Defence Force or District Health Boards.
- 3.6.2 The internal complaints and review process helps ensure quality and consistency of decision-makers across the MIQ system, particularly where many of the decision-making powers that rest with the Chief Executive of MBIE are delegated.
- 3.6.3 People may also escalate their complaint to external bodies such as the Office of the Ombudsman or the Privacy Commissioner. These external review bodies and their powers exist independently of the COVID-19 Act and Orders and play an important role in the oversight of the system.

3.6.4 The internal complaints and review process is operating well. However, there is no statutory requirement for this process to be in place.

### Options to address this issue

3.6.5 Three options have been identified for the complaints process:

- a. Under **Option One (status quo)**, there is no legislative requirement for decisions that affect individuals to be reviewed. However, MIQ runs an administrative complaints process as per natural justice principles.
- b. **Option Two (preferred option)** would use the Act to require the CE of MBIE to ensure a complaints process is in place, while leaving the detail of the process up to MIQ.
- c. **Option Three** would not only require a process to be in place, but would include detailed requirements on the process in the Act.

3.6.6 Of these, option two is the preferred option because it adds limited legislative protection to the process without limiting operational flexibility and provides some legislative balance in the context of the other proposed amendments. The following table sets out this analysis of the three options against the criteria set out in section 3.1.4.

	Option One: Status quo	Option Two (preferred option): Act requires complaints and review process to be in place	Option Three: same as Option Two plus Act sets requirements of complaints and review process
<b>Effectiveness</b> Able to achieve the objectives of MIQ	0	0 A complaints process already exists so there would be limited impact on effectiveness	0 A complaints process already exists so there would be limited impact on effectiveness
<b>Proportionality</b> Provides safeguards on restrictions to rights	0	+ Introduces legislative protection that complaints will be reviewed	+ Introduces legislative protection that complaints will be reviewed
<b>Durability</b> Provides operational flexibility in changing environment	0	0 Does not impact operational flexibility of MIQ	- A prescriptive process will reduce operational flexibility within MIQ
<b>Transparency</b> Clear what the rules are, when they apply and who makes decisions	0	0 No change to transparency relative to the status quo	+ The complaints process would be clearly laid out
<b>Overall assessment</b>	0	+ Adds legislative safeguards without significant impact on the operational responsiveness of MIQ	- Adds a legislative safeguard but likely to have a significant impact on the flexibility of MIQ

## 3.7 Assuring quality of procedures and MIQ facilities

### Problem definition

3.7.1 MBIE and the Ministry of Health operate a regular review process of Standard Operating Procedures (SOPs). MIQ facilities are also reviewed as needed. Neither of these processes

are statutory, but non-specialist review mechanisms such as the Ombudsman and Privacy Commissioner play a similar role to that mentioned above.

**Options to address this issue:**

3.7.2 Three options have been identified for this proposal:

- a. Under **Option One (status quo and preferred option)**, there is no legislative requirement for internal MIQ processes and MIQ facilities to be reviewed. However, MIQ and MoH have undertaken several reviews of MIQ facilities and regularly review SOPs.
- b. **Option Two** would use the Act to require the CE of MBIE to ensure a review process is in place for internal MIQ processes and MIQ facilities, while leaving the detail of the process up to MIQ.
- c. **Option Three** would not only require a process to be in place, but would include further requirements on the process in the Act.

3.7.3 Option one (the status quo) is the preferred option for this proposal because of the significant impacts on operational flexibility mandating such a process would have when a number of existing, more flexible mechanisms are already in place. Moreover, the alternative options do not provide any compelling benefits to support change. The following table sets out the analysis of the three options against the criteria set out in section 3.1.4.

	Option One: Status quo (preferred option)	Option Two: Act requires system review and quality assurance process is in place	Option Three: same as Option Two plus sets out details and requirements of process
<b>Effectiveness</b> Able to achieve the objectives of MIQ	0	-  This would duplicate already active involvement by the Ombudsman and would draw resources from elsewhere in MIQ	-  This would duplicate already active involvement by the Ombudsman and would draw resources from elsewhere in MIQ
<b>Proportionality</b> Provides safeguards on restrictions to rights	0	0  As this would not apply to individual decisions it would not impact proportionality	0  As this would not apply to individual decisions it would not impact proportionality
<b>Durability</b> Provides operational flexibility in changing environment	0	-  In order to be meaningful any requirement to review will necessitate timeframes, which will limit the responsiveness of the already tight resourcing of MIQ	--  A prescriptive process and timeframes would greatly limit the flexibility of MIQ
<b>Transparency</b> Clear what the rules are, when they apply and who makes decisions	0	+  Publishing the results of the reviews would improve transparency of process	+  Publishing the results of the reviews would improve transparency of process
<b>Overall assessment</b>	0	-  This would reduce flexibility to limited benefit given the current involvement of the Ombudsman and the ongoing reviews of SOPs	--  This would greatly reduce flexibility to limited benefit given the current involvement of the Ombudsman and the ongoing reviews of SOPs

## 3.8 Collecting data to support invoicing

### Problem definition

- 3.8.1 Currently MIQ has no ability to compel people staying in MIQ to provide accurate information (e.g. an onwards address) to support invoicing for MIQ costs. The information required for MIQ fees collection is collected at MIQ facilities through the returnee health survey. In many cases the information provided by people undertaking isolation or quarantine is inaccurate or insufficient to establish liability for fees or send invoices. There may be other reasons to have onwards contact information, such as returning valuable lost property and contact tracing.
- 3.8.2 This contributes to a backlog of people who have undertaken isolation or quarantine that have not been issued an invoice for their MIQ stay, as they are pending contact and other details. This has the potential to result in a significant cost being borne by the government for those persons' stays in MIQ.

### Proposed power and options:

- 3.8.3 Three options have been identified:
- Under **Option One (status quo)**, there is no legal requirement that people staying in MIQ facilities provide accurate or complete information (contact details and onwards address) to support post-departure administration such as invoicing
  - Option Two** would use secondary legislation to require that this information is provided
  - Option Three (preferred option)** would use primary legislation to the same effect.
- 3.8.4 Of these, option three is the preferred approach. This is because it will contribute to achieving the cost recovery intent of the Act while providing the greatest legal surety given its impact on rights. The following table sets out the analysis of the three options against the criteria set out in section 3.1.4.

	Option One: Status quo	Option Two: Secondary legislation requires people to provide contact details and onwards address	Option Three (preferred): Act requires people to provide contact details and onwards address
<b>Effectiveness</b> Able to achieve the objectives of MIQ	0	++ More people who have undertaken MIQ and are liable for fees could be successfully invoiced	++ More people who have undertaken MIQ and are liable for fees could be successfully invoiced
<b>Proportionality</b> Provides safeguards on restrictions to rights	0	- Enabling a search power through secondary legislation has limited safeguards	++ Using primary legislation to authorise a search power provides the best safeguard given the implications for people's rights
<b>Durability</b> Provides operational flexibility in changing environment	0	- Secondary legislation is less flexible than operational decision making as it requires Ministerial or Governor-General approval	-- Parliamentary process to make changes is much less flexible than operational, Ministerial or Order in Council processes.



	Option One: Status quo	Option Two: Secondary legislation requires people to provide contact details and onwards address	Option Three (preferred): Act requires people to provide contact details and onwards address
<b>Transparency</b> Clear what the rules are, when they apply and who makes decisions	<b>0</b>	<b>+</b> The power would be clearly enabled and who would be responsible for using it.	<b>+</b> The power would be clearly enabled and who would be responsible for using it.
<b>Overall assessment</b>	<b>0</b>	<b>+</b> This would facilitate the invoicing of people who have undertaken MIQ but does not provides limited safeguards.	<b>++</b> This would facilitate the invoicing of people who have undertaken MIQ and provides safeguards for people's rights.

## Section 4: Conclusions

### 4.1 What option, or combination of options is likely to best address the problem, meet the policy objectives and deliver the highest net benefits?

#### The preferred approach would provide six new provisions in the Act

- 4.1.1 Four of these provisions already exist, either operationally or through Orders:
- a. **Managing demand for places in MIQ** – using primary legislation to set out the powers and responsibilities with regard to allocation, but retaining these as they exist in the Isolation and Quarantine Order (**option two**).
  - b. **Managing movement** – recognising the ability to direct, restrict and impose conditions on movement to, from and within MIQ facilities (including room restrictions) and include criteria for decision making (**option three**). This would apply to both people undertaking managed isolation or quarantine and other people onsite who enter an MIQ facility, such as authorised services or unauthorised people attempting to enter.
  - c. **Managing day-to-day operations** – empowering the CE of MBIE to make rules for day to day operations of MIQ facilities such as mail, deliveries and alcohol (**option three**).
  - d. **Dealing with complaints** – requiring that a complaints process should be in place, but without prescribing the details of the process (**option two**).
- 4.1.2 The fifth, **reversing fee liability**, would mean that in principle all people in MIQ are liable for fees unless they are exempt (**option two**). However, decisions on who is liable for fees will be made as part of the fee regime and regulations review.
- 4.1.3 The **collection of information to support invoicing** proposal would introduce a new power, requiring that people undertaking isolation and quarantine to provide MBIE with contact and other information so that MBIE is able to contact them once they have left for invoicing (**option two**).
- 4.1.4 This RIS has also considered a seventh proposal, **assuring quality of processes and MIQ facilities**. However, the preferred approach is to retain the **status quo**; non-statutory internal review supported by non-specific review processes such as those undertaken by the Ombudsman and the Privacy Commissioner.
- 4.1.5 The changes to the infringement regime proposed by the Ministry of Health RIS are also relevant here, as they will affect any infringement offences attached to the proposed powers.

#### This approach would help MIQ achieve its objectives

##### *Effectiveness – ability to achieve the objectives of MIQ*

- 4.1.6 These proposals would best help to achieve MIQ's objectives by facilitating financial and operational sustainability. At present policy changes require greater work to ensure that footing is maintained to a much greater extent than would be the case in a system with more explicit powers. This burden reduces flexibility and has an opportunity cost, impacting both individuals within MIQ and potentially the wider population. These proposals will increase legal certainty, reducing the burden of this work. The proposals will also facilitate cost recovery and ensure that factors other than public health are recognised adequately in MIQ's operation.

4.1.7 As the COVID-19 response is reliant on a system of voluntary compliance, cost enabling enforcement through data collection and the proposed infringement changes will help to ensure that the willing compliance of the majority is not undermined by a lack of enforcement action against those who do not.

*Proportionality - providing safeguards on restrictions to rights*

4.1.8 The above proposals have implications for a number of rights under NZBORA:

- a. Right to freedom of movement (including the right to enter New Zealand for New Zealand citizens)
- b. Right to be treated with humanity and dignity in detention (rights of persons arrested or detained)
- c. Right to freedom of expression

4.1.9 The most significant proposals in this respect are the managing movement and managing items proposals. Including explicit requirement to recognise criteria such as NZBORA rights in decision making will help to ensure that restrictions on these rights are justified.

4.1.10 The other proposals also have some implications. For example, the right to enter New Zealand is nominally impacted by the managing demand proposal and the reversal of fee liability assumption; we note that this consideration was already given to the managing demand proposal when including it on the Orders, and no change to who is liable to pay fees is proposed here. Instead, that will be part of the MIQ fees and regulations review, which will need to consider NZBORA rights. The Ministry of Justice has also indicated that requiring contact details for invoicing also constitutes a search power. During the drafting stages of the legislation, MIQ and the Ministry of Health will work with Crown Law and the Parliamentary Counsel Office to ensure that NZBORA rights are given adequate recognition in the decision making frameworks for these powers.

4.1.11 Given the implications that these powers have for NZBORA rights, it is best to ensure these powers are properly subject to parliamentary scrutiny, and for this reason use of primary legislation is preferable to the existing operational and secondary legislation arrangements.

*Durability - providing operational flexibility in a changing environment*

4.1.12 This combination of proposals also provides the greatest level of flexibility in an environment that changes regularly.

4.1.13 Retaining Ministerial and CE decision making, rather than requiring decisions by Cabinet, will assist with this flexibility. Not prescribing a process for complaints will also help. Perhaps most significantly, not adding a requirement for external review for processes and MIQ facilities will provide flexibility. This is because such a process, being proactive and larger than reactive complaints investigations, would be a greater resource drain, and would duplicate existing mechanisms such as those provided by the Ombudsman. It would also likely be obsolete quickly, given the fast pace of change and the already regular reviews of SOPs and MIQ facilities.

*Transparency - being clear what the rules are, when they apply and who makes decisions*

4.1.14 Explicit recognition of these powers is more transparent than secondary legislation and operational processes that are not subject to the same levels of scrutiny and

require more knowledge to interpret or locate, even when published as the SOPs are.

- 4.1.15 Transparency is most relevant for the managing movement and managing items proposals, hence the proposal that the power also explicitly require consideration of (as-yet undecided) criteria such as NZBORA rights, health and safety or workers and operational capacity alongside the overarching public health rationale.

## **4.2 Additional costs and benefits of these proposals relative to the status quo**

- 4.2.1 The problems these proposals intend to address are fundamentally problems of good law rather than policy. The policies themselves are already largely in place in some form. However, because the policies are not explicitly provided for, substantial work has been required to implement them and amend them over time than would have been the case with explicit provision.
- 4.2.2 The primary benefit, therefore, is the cumulative gain to operational efficiency, transparency and accountability of the MIQ system.
- 4.2.3 Costs of the proposals are limited. People who undertake MIQ will be legally required to provide information for the purposes of invoicing, and this has implications for their rights. However, we note that the people who will be invoiced as a result of this data collection were already legally required to pay for MIQ, but could not be charged due to insufficient power to enforce this.

## Section 5: Implementation and operation

### 5.1 How will the new arrangements work in practice?

- 5.1.1 Introduction of secondary legislation will likely be necessary to fully implement the 'managing movement' and 'managing day-to-day operations' proposals (orders and rules, respectively). However, in the interim, these policies will be able to continue in their current form, justified under general law principles.
- 5.1.2 The complaints, data collection and managing demand proposals should have little to no implementation required, as the processes for these are already in place. The data collection for invoicing will become enforceable as a result of the changes.
- 5.1.3 Reversing fee liability will require parallel changes to the existing Regulations, as is discussed in 5.2 below.

### 5.2 What are the implementation risks?

- 5.2.1 The reversing fee liability proposal will change one of the underpinning concepts of the cost recovery Regulations, meaning that once in force the current Regulations will become unenforceable. A parallel process of reviewing the fees regime and Regulations is currently underway, but if issues should arise in producing new Regulations at the same time as the Bill commences, there are mechanisms to provide for flexibility. For example, the fee liability amendments could be activated at a later date, perhaps through Order in Council.

## Section 6: Monitoring, evaluation and review

### 6.1 How will the impact of the new arrangements be monitored?

- 6.1.1 The overall impact of the changes to the Act has on the implementation of the Elimination Strategy will be monitored through the Ministry of Health's COVID-19 monitoring and reporting system, which is discussed in their RIS.
- 6.1.2 In addition, MBIE monitors and evaluates MIQ facilities and internal processes through operational reporting.
- 6.1.3 However, we note that these proposals are not for new policies but rather change the legal basis for their use, and so limited impact will be perceptible.
- 6.1.4 Where the changes are primarily to provide clearer legal footing, little impact is expected to be visible.

### 6.2 When and how will the new arrangements be reviewed?

- 6.2.1 The Act, its framework of subordinate legislation and the operational arrangements of MIQ are maintained in a state of ongoing review. This includes implementation arrangements and published material such as Standard Operating Procedures.