



## BRIEFING

### Possible changes to Managed Isolation and Quarantine fees settings

<b>Date:</b>	19 November 2020	<b>Priority:</b>	Medium
<b>Security classification:</b>		<b>Tracking number:</b>	2021-1156

Action sought		
	Action sought	Deadline
Hon Chris Hipkins <b>Minister for COVID-19 Response</b>	<b>Note</b> the contents of this paper and discuss with officials on Monday 23 November 2020	23 November 2020

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Melleny Black	General Manager, MIQ Policy	Privacy of natural persons	✓
Privacy of natural persons	Director, MIQ Policy		
Privacy of natural persons	Senior Policy Advisor, MIQ Policy		

The following departments/agencies have been consulted
Ministry of Transport, Ministry of Foreign Affairs and Trade, Ministry of Health, MBIE (immigration policy).

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments



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### Purpose

To advise you on possible changes to Managed Isolation and Quarantine (MIQ) fees settings and seek your direction on priorities and timing.

### Executive summary

The COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 prescribe fees for people entering MIQ facilities. The prescribed fees were set low to balance the right of New Zealanders and permanent residents to enter New Zealand with the need to have an economically sustainable MIQ system. The prescribed fees apply to all critical workers and critical health workers.

The Regulations were developed at pace and do not allow for employers of critical workers to be liable (only the individual workers). Bespoke contractual arrangements have been entered into with sports teams (critical workers) to recover the additional costs of bespoke facilities and wraparound services.

On 16 November 2020, in making decisions about border exceptions for Recognised Seasons Employer (RSE) workers, Cabinet agreed:

- to recover a higher level of cost for MIQ services from all employers of critical workers, based on the average cost, currently estimated to be \$4,722 per person, through a contract with the employer or industry group
- that the MIQ fees should be paid upfront by employers of critical workers.

We can contract directly with employers or industry groups for class exemptions of critical workers (e.g. RSE workers) as long as we are providing additional services on top of those provided to people who enter MIQ and pay the prescribed fee. However, 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. To charge the employers of all critical workers the higher fee, the Regulations will need to be amended.

There are broader considerations that need to be taken into account to ensure the fee settings for critical workers in the Regulations are correct, including considering how critical health workers, air and maritime crew, and groups similar to critical workers (such as students) are treated. If Regulations are progressed quickly, these considerations will not be able to be taken into account and there are risks of unintended outcomes.

There are a number of other changes to the Regulations that have arisen and require further work and detailed advice, including changes to support safe travel zone arrangements, exceptions from fees for families and foreign dignitaries attending the second anniversary of the Christchurch attacks, and extending the period for returning New Zealand citizens or residents to be exempt from MIQ to 90 to 120 days.



Not all of these changes can be progressed at the same time. You could progress very narrow changes for critical workers this side of Christmas. It will be tight, require waiving or truncating usual steps and process, and will not be able to address broader considerations. The alternatives this side of Christmas are to make employers liable as a condition of critical worker visas for the prescribed fee in the Regulations (but not more), or to continue charging individual critical workers the prescribed fee and pursue bespoke contractual arrangements with large groups of critical workers only.

In considering which changes to progress this year, we also advise that consideration needs to be given to the operational ability to implement the changes, given the immaturity of MIQ's systems.

## Recommended action

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The Ministry of Business, Innovation and Employment (MBIE) recommends that you:

a **Note** that Cabinet agreed to recover a higher level of cost for MIQ services from all employers of critical workers, based on the average cost, currently estimated to be \$4,722 per person, through a contract with the employer or industry group

*Noted*

b **Note** that Cabinet agreed that the MIQ fees should be paid upfront by employers of critical workers

*Noted*

c **Note** that MBIE can charge large groups of critical workers (approved class exemptions such as RSE workers and deep sea fishing crew) in line with Cabinet decisions, but it is not practicable to enter into contracts with every employer of a critical worker

*Noted*

*EITHER*

d **Agree** for officials to continue policy work before Christmas to address the suite of potential changes to Regulations, and seek policy decisions and amendments to the Regulations in the New Year (and **direct** officials to provide you advice on proposals)

Agree / **Disagree** / Discuss

*OR*

e **Agree** to make changes before Christmas, to implement one or more of the options below:

*EITHER*

i. amend the Regulations to make critical workers liable for a higher fee (\$4,722 + GST – the average weighted cost of MBIE's direct MIQ costs across the 32 facilities) (*recommended given that MIQ cannot fully implement the 16 November Cabinet decision without this change*)

**Agree** / Disagree / Discuss

ii. amend the Regulations to allow MIQ to require employers to pay on behalf of critical workers, and/or in advance, where appropriate (noting that not all critical workers have an existing employer, and there will be operational limitations)

**Agree** / Disagree / Discuss

*OR*

iii. instead of (i) and (ii), invite the Minister of Immigration to certify instructions to amend visa conditions for critical workers before Christmas so that employers can be liable for the current prescribed fee for critical workers (other than large groups of critical workers whose employers/industry group will be charged through contractual arrangements)

Agree / **Disagree** / Discuss

iv. amend the Regulations to extend the requirement from 90 days to 120 days for a person visiting New Zealand to be exempt from MIQ fees

Agree / **Disagree** / Discuss

v. amend the Regulations to provide an exemption from fees for families and foreign dignitaries attending the second anniversary of the Christchurch attacks in March 2021.

Agree / **Disagree** / Discuss

f **Agree** that the second tranche of deep sea fishing crew be charged on the same basis as the first tranche (the current prescribed fee in the Regulations).

**Agree** / Disagree / Discuss

g If (e)(i) and (ii) are not preferred, **direct** officials to pursue bespoke contractual arrangements with incoming large groups of critical workers (eg RSE workers) and seek that employers pay a flat fee of \$4,722 + GST per person.

Agree / **Disagree** / Discuss

h If any of the options requiring Regulation change before Christmas are preferred, **direct** officials to prepare a Cabinet paper seeking amendments to the Regulations.

**Agree** / Disagree / Discuss

Privacy of natural persons

**Group Manager, MIQ Policy**  
MBIE

19 November 2020



Hon Chris Hipkins  
**Minister for COVID-19 Response**

..24 / ..... 11 / ..... 2020

## Background

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### The COVID-19 Public Health Response Act 2020 established the MIQ fees regime

1. Amendments to the COVID-19 Public Health Response Act 2020 (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.
2. The Act established the following criteria for cost recovery:
  - the prescribed charges recover from any class of persons no more than an estimate of the actual and reasonable MIQF costs incurred in relation to that class (including both direct and indirect costs); 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 the New Zealand Bill of Rights Act 1990.
3. The COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 (the Regulations) came into force on 11 August 2020.
4. The fees set out in the Regulations are:
  - \$3,100<sup>1</sup> (incl GST) for the first or only person in the room
  - \$950 (incl GST) for an additional adult in the same room
  - \$475 (incl GST) for an additional child (3-17 years) in the same room
  - No charge for a child under three years old sharing a room.
5. New Zealand citizens or residents<sup>2</sup> are liable for a charge if:
  - they are currently overseas and return to New Zealand for a period of less than 90 days;
  - or
  - they leave New Zealand after the Regulations came into effect (11 August 2020) and return at a later date.
6. Temporary visa holders have to pay the MIQ fees, unless they left New Zealand on or before 19 March 2020, and were ordinarily resident in New Zealand as of 19 March 2020. All critical workers (visa class) entering New Zealand are liable for charges.
7. The Regulations make individuals liable for the payment of fees. MBIE can send invoices to the employers of critical workers, but liability for any debt resulting of non-payment sits with the employee.

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<sup>1</sup> Some critical workers, like aircrew, are charged on a pro-rata basis - \$221 per person per day.

<sup>2</sup> '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.



8. 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. If individuals spend longer in MIQ (for example people who test positive for COVID-19 and enter quarantine), they are not charged more than the standard 14 day fee. 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. This does not depend on their immigration status in New Zealand.

**The fees settings aim to strike a balance between the rights of New Zealanders to return home and having an economically sustainable MIQ system**

9. The fee system was introduced because it was not sustainable for the government to continue to fund all the costs of MIQ.
10. Other considerations informing the development of the fees were:
  - The need for clarity and transparency – to provide certainty to travellers and employers about the costs they will incur well in advance of entering New Zealand.
  - The minimum necessary restriction on New Zealanders' right to enter New Zealand under the New Zealand Bill of Rights Act 1990 (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.
  - Avoidance of over-recovery - the current fees cover part of the costs of MIQ, including average accommodation, food and ancillary costs. They do not include any health and welfare services, as it was considered that those services were already publically-funded.
  - Fees should not be used to penalise users, offset the cost of future users of the service, or to attempt to recover any deficit that may have occurred as a result of previous under-recovery. This also helps reduce the risk of successful legal challenge to the level of the fees on the basis that they have been set beyond direct cost recovery.

**Prior to the Regulations, there was no legal authority for MBIE to charge critical workers for MIQ**

11. 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].
12. As MBIE did not have the ability to charge fees until the Regulations came into force, invoices up until that point were generated by, and payments made to, hotels, to cover the direct costs of critical workers' accommodation, food and ancillary services (chargeback).
13. 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).

**Critical workers are now liable for the prescribed fees, but these are subsidised by the government**

14. 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 full costs of critical workers' stays in MIQ.

15. The Regulations specify that critical workers and critical health workers are liable to pay MIQ fees prescribed in the Regulations. However the prescribed fee is based on the costs of accommodation and food only at the lowest-cost facility, to ensure that no users are overcharged from a cost-recovery perspective. The prescribed fee is likely to be lower than the average amount paid in respect of critical workers prior to the Regulations coming into force.
16. The rationale underpinning the prescribed fee and who is liable in the Regulations does not always work in the context of critical workers. Considerations around setting fees low to ensure they are not an unjustified limitation on rights do not apply to critical workers as they do not have a protected right to return to New Zealand in the same way that citizens and permanent residents do. Critical workers enter New Zealand primarily for economic or job-related reasons. Employers also receive benefits of bringing critical workers into New Zealand, and MIQ charges should arguably be covered as part of the business's costs.
17. A different fee was not explicitly considered for critical workers during the development of the Regulations due to the speed of policy development and drafting. For similar reasons, the Regulations did not include the ability to make employers (or a sponsoring agency) of critical workers liable, only individuals (though Cabinet's and Ministers' intentions were to charge employers directly).
18. The table below shows how the current prescribed fees for a single occupant compare to average MIQ MBIE-related costs for a 14-day stay (as of 5 November 2020). These figures do not incorporate Health costs or costs for other services provided by partner MIQ agencies.

	<b>Current Fees in Regulations</b>	<b>Cost to Government</b>
<i>Standard 14-Day MIQ stay per person</i>	<i>First/single occupant</i>	<i>Weighted average across MIQ network (single occupant)<sup>3</sup></i>
Hotel Facility (incl food)		\$3,371
Transport <sup>4</sup>		\$251
Operational		\$508
Support		\$592
<b>Total excl GST</b>	<b>\$2,696</b>	<b>\$4,722</b>
<b>Total incl GST</b>	<b>\$3,100</b>	<b>\$5,430</b>

19. It has always been intended that the fees would be kept under regular review to ensure that they remain justifiable in light of any changes to circumstances domestically or globally.
20. This paper outlines options for possible changes to the MIQ fees system and seeks your direction on priorities and timing.

<sup>3</sup> Based on an occupancy rate of 90%.

<sup>4</sup> Transport costs vary significantly across regions. For example the average transport cost for Auckland is \$96 compared with the average transport cost for Wellington (\$892). The cost included in the above table is a weighted average cost for transport across the regions.

## **Cabinet agreed to charge all employers of critical workers a higher fee**

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21. On 16 November 2020, in making decisions about border exceptions for RSE workers, Cabinet agreed [CAB-20-MIN-0473]:
  - to recover a higher level of cost for MIQ services from all employers of critical workers, based on the average cost, currently estimated to be \$4,722 per person, through a contract with the employer or industry group
  - that employers of critical workers should pay MIQ fees upfront.
22. The Regulations do not currently allow a higher fee to be charged nor for employers to be liable. The Regulations also only provide for invoicing on the day or after a person leaves MIQ.
23. In order to implement Cabinet’s decision, MBIE (MIQ) would need to contract outside of the Regulations directly with employers. To date, this has only been done for sports teams in the immigration border exception category who have required additional wraparound services and facilities.
24. We can contract directly with employers or industry groups for large groups of critical workers, such as RSE workers or deep sea fishing crew provided that we are providing additional services to those provided to other people entering MIQ who are required to pay the prescribed fee. Legal professional privilege
25. We understand that Cabinet’s intention was for MBIE to contract with employers to recover a higher level of cost for MIQ services for *large groups* of critical workers, as opposed to all critical workers (including individual critical workers). The latter is not practicable because issuing separate contracts with each employer for the particular worker would be administratively complex. Additional capability would also need to be built into our allocation system to ensure there was advance notice of their arrival.
26. We note that using a process outside of the Regulations for a significant proportion of those coming through the border, who would ordinarily be liable under the Regulations, would likely result in increased scrutiny and could lead to legal challenges.
27. To charge the employers of all critical workers the higher fee, the Regulations will need to be amended. This could be done quickly, but it would be tight and would not immediately address the additional considerations set out below.

## **Considerations for changing fee settings for critical workers in the Regulations**

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### **There are many kinds of critical workers**

28. The New Zealand border is currently closed to most people except those citizens and residence class visa holders (outside the scope of this paper) or those who come in as an exception to border restrictions. People who enter through a border exception must apply through Immigration New Zealand and have a critical purpose for coming to New Zealand. Two of the categories of border exceptions are “critical health workers” and “other critical workers”.



29. A critical worker is a person who is required to come to New Zealand and:
- has unique experience and technical or specialist skills not readily obtainable in New Zealand; or
  - is undertaking a time critical role:
    - i. for an approved infrastructure project, an approved event (e.g. the Bledisloe Cup) or a major government- approved programme (e.g. Rocket Lab launches), or
    - ii. in support of an approved government-to-government agreement (e.g. the Antarctic Programme), or
    - iii. for work which brings significant wider benefit to the national or regional economy.
30. The government can also approve classes of workers to be critical workers (e.g. deep sea fishing crew and RSE workers). We often refer to these as large groups of critical workers. The government has also agreed that a small number of critical workers can enter New Zealand MIQ to travel to Pacific countries (for example to address urgent infrastructure needs).
31. Critical health workers are another border exception, separate from the other critical workers, but subject to the same requirements and processes in immigration settings, and subject to the same MIQ fees under the Regulations.
32. Given the range of critical workers and critical health workers coming into New Zealand, a blanket approach to charging employers a higher fee in the Regulations might have unintended consequences. These complexities need to be worked through.

**Critical health workers do not always have an employer and higher fees may have impacts for the health workforce and our ability to respond to COVID-19**

33. Critical health workers are subject to the same MIQ fees as critical workers under the Fees Regulations. The health and disability system has historically relied on the international workforce. In 2019, 42% of doctors and 30% of nurses came to work in New Zealand from other countries.<sup>5</sup>
34. 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 District Health Boards (DHBs), their employers can also be Non-Government Organisations, or private organisations such as General Practices, Pharmacies or Aged Residential Care providers.
35. As the employer status varies from private, public, NGO, small and large employers, it is worth considering the different abilities of employers to meet costs of MIQ. Further, there is not always an employer to make directly liable for MIQ fee, for example with self-employed individuals or with foreign nurses entering to undertake the Nursing Council's Competence Assessment Programme.
36. We also note 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.
37. We will work with the Ministry of Health to understand the full implications of an increased fee on this wide-ranging critical health workforce, including identifying mechanisms like fee waivers

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<sup>5</sup> Statistics provided by Ministry of Health workforce analytics team from 2019.

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.

### **Approved classes of critical workers**

38. Approved classes of critical workers are diverse in size and organisation. The Regulations will need to be consistent in how these groups are treated. A higher fee should balance the industry interests, and the workers' circumstances with the overall benefits to the New Zealand economy and public health response to COVID-19.

#### *Deep sea fishing crew*

39. Accommodating large groups as a single cohort in one facility, as we have seen from the first tranche of deep sea fishing crew, is resource intensive from an MIQ perspective, given that these groups often require considerable wraparound support.
40. The first tranche of fishing crew were charged the current prescribed fee (\$3,100) which did not include wraparound fees. The costs Cabinet agreed to charge through contracts (refer to the table in paragraph 18 above) would need to include some of these wraparound costs.
41. The crew's unforeseen extended stay in MIQ placed additional strain on the system and had other impacts, including on seafarer welfare. It also made planning for the second cohort's arrival more challenging.
42. Given the first tranche of deep sea fishing crew were charged the current prescribed fee (\$3,100), we recommend charging the second tranche on the same basis. Ministers approved the first and second tranches of deep sea fishing crew as classes of critical workers at same time. To charge a higher fee for the second tranche of fishing crew now (either by contract or through amending the Regulations) creates parity issues.

#### *Sports teams*

43. We have already made some bespoke arrangements with sports teams for fees whereby we contract for a value above the fees regime (\$7,000 per person GST exclusive), which is closer to full cost recovery. This covers bespoke facilities and additional wrap around services.
44. We propose to continue to use this model for the incoming sports teams during November and December. On 16 November 2020 we provided you with advice about MIQ funding for bespoke sporting arrangements [briefing 2021-1299 refers].

### **Consistency with other groups that are not critical workers needs to be considered**

#### *Maritime and air crew*

45. Air crew and maritime crew are not "critical workers" under the border exceptions. If the Regulations are amended to change how critical workers are charged and what they pay, we need to consider whether air crew and maritime crew should be charged on the same basis. This would reflect that their employers are generally responsible for their accommodation and food. On that basis the employer, and not the individual worker, could be made liable for the costs of MIQ in the first instance. 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.
46. Airlines play a key role in transporting high-value goods, medical supply and critical workers to New Zealand and facilitating the export of high-value goods to international markets. International-based aircrew are required to stay in MIQ while in transit/layover in New Zealand. The New Zealand Government provides financial support to the aviation sector through the International Air Freight Capacity (IAFC) Scheme. The IAFC scheme provides funding to some airlines to maintain international air freight movement and support New Zealand's trade links with global markets during the pandemic.



47. A key consideration for increasing the fees is how this impacts on the IAFCA and airlines servicing the New Zealand market. We will continue to work with the Ministry of Transport to better understand the full implications of potential fees increase to the aviation sector, though there is some concern a higher fee would impact on the desirability of New Zealand routes for some airlines. We also need to consider airlines that hold existing contracts with hotels/MIFs. We understand aircrew have existing special requirements for transit/layover stays that are met in these contracts (food allowance, specific check-in/check-out times).
48. There are complexities to work through with maritime workers in identifying the appropriate party to be liable for the MIQ fee. Unlike other critical workers, there is a third-party involved with managing maritime crew's MIQ payments and presence in New Zealand. Generally a New Zealand-based shipping agent manages this on behalf of overseas shipping owners.
49. Another consideration will need to be made to the wider international shipping sector noting that they play a vital role in giving New Zealand access to the global market. We will work with the Ministry of Transport to gain a fuller understanding of potential implications of changes to the fees on the international shipping sector.

#### *International students*

50. International students are not "critical workers". 1,000 international students and their families are expected to arrive in New Zealand from early 2021, subject to booking a place through the Managed Isolation Allocation System.
51. The key consideration for fees is that students do not technically have an employer to pay the MIQ fee. PhD students have unlimited open work rights so many may have employers, who could technically pay their MIQ fee but others will not. New Zealand universities may be in a position to cover the costs of MIQ stay for these groups of students but further socialising of a fees increase with the tertiary sector is needed.
52. We will need to explore this further with relevant agencies and stakeholders and consider whether the charge applied to critical workers can also be applied to international students. This is a wider consideration for the fees regime so that the system is durable and takes into account future changes to border restrictions.

### **There are a range of other issues in the Regulations that need addressing**

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53. There are a number of other issues that will require amending the Regulations. Officials will provide you detailed advice on these. The key issues officials are working through are summarised below.

#### **The Regulations will need to be amended to support safe travel zones**

54. The Ministry of Foreign Affairs is preparing Cabinet papers seeking agreement to the details of the COVID-safe travel zone with Australia and commencement of the arrangement with the Cook Islands. We understand these papers are expected to be considered by Cabinet in late November and early December.
55. The Safe Travel Zone Arrangement being negotiated with Australia allows for people travelling through one safe travel country to return to another (e.g. Australian citizens travelling from the United Kingdom, transiting through New Zealand to return to Australia, and vice versa). Those who cannot meet transit requirements<sup>6</sup> must undertake 14 days managed isolation or quarantine in that country.

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<sup>6</sup> In New Zealand, this is currently 24 hours airside. Australia's transit requirements allow for 8 hours spent airside or up to 72 hours in the country.



56. Due to high levels of demand for Australian managed isolation facilities (Australia has 6,315 weekly quarantine spaces), New Zealand could see more demand for MIQ spaces from passengers that are using New Zealand as a means to enter Australia. This risk could be managed through capping the number of managed isolation spaces available for transiting Australian travellers and/or increasing the MIQ fees for Australian travellers staying in MIQ in New Zealand, so that it is closer to actual costs of MIQ.
57. The fee for Australian travellers could be similar to the fee prescribed for critical workers. However, in the spirit of the Trans-Tasman Travel Arrangement as well as the Safe Travel Zone Arrangement, we recommend that the fee remain in keeping with what Australian states will charge New Zealanders staying in their MIQ who are transiting through Australian when returning to New Zealand. Australian officials have not indicated whether states are considering increasing fees for New Zealanders transiting.
58. Consideration also needs to be given to:
  - whether the New Zealand Government should cover the cost of fees for all New Zealand citizens and permanent residents required to undertake quarantine in Australia, if they are travelling on to New Zealand and would normally be exempt from MIQ fees here
  - whether New Zealanders who are in Australia at the time a safe travel zone is suspended and are required to enter MIQ on their return, should be required to pay for MIQ.
59. There are some technical changes that are also required to ensure the fee Regulations operate smoothly and as intended for the arrangements with the Realm countries.
60. MBIE is working with the Ministry of Health, Ministry of Foreign Affairs and trans-Tasman counterparts to develop proposals on these implementation questions and will provide you detailed advice.
61. It is difficult to determine when Regulation changes will need to be in place. The Safe Travel Zone Arrangement with Australia will commence when both New Zealand and Australia meet a set of health criteria, including that there are no locally acquired cases of unknown source for the preceding 28 days.

**Extending the period for returning New Zealand citizens or residents to be exempt from MIQ fees from 90 days to 120 days**

62. New Zealand citizens, residence class visa holders and Australians ordinarily resident in New Zealand must pay MIQ charges if they visit New Zealand for a period of less than 90 days. If these people stay for over 90 days, they are exempt from the charges. This exemption does not apply to those who left New Zealand after 11 August 2020.
63. MBIE recommended the 90 day period as it aligns with Statistics New Zealand's definition of a short-term arrival, and most visa waiver visitor durations. We reasoned that this was also likely to be a longer length of time than most holidays, meaning that people staying longer than three months in New Zealand are unlikely to solely be here for recreational travel reasons.
64. We understand that you are interested in extending the exemption period to 120 days to disincentivise people returning for periods just over 90 days to get around being liable for MIQ fees. MIQ does not have evidence that this is occurring. Anyone minded to game the system is more likely to provide MIQ staff with incorrect information about their intended length of stay, rather than extending their trip beyond a time marker to avoid being liable for fees.

## **Fee exemptions for family members/foreign dignitaries to attend the second anniversary of the Christchurch attacks**

65. A border exception was created for family members and support persons of survivors and people killed in the Christchurch mosque attacks to enter New Zealand for the purposes of attending the sentencing of the person convicted of carrying out the attacks earlier this year.<sup>7</sup> The Regulations included an exemption from fees for this group of people.
66. The second anniversary of the Christchurch attacks is coming up in March 2021. We understand the Department of Internal Affairs and Ministry of Foreign Affairs and Trade are providing advice to the Prime Minister about enabling limited participation by foreign national dignitaries and close family members to attend the anniversary event and other major commemorative events in 2021. Initial advice indicates that this group would be capped at 50 people for 2021, subject to review.
67. We expect any group would be required to enter managed isolation. Under current settings, these people could apply for special circumstances fee waivers. Fee waivers are granted by the Chief Executive of MBIE and would require applications, supporting evidence and be decided on a case-by-case basis.
68. Alternatively, if Ministers were inclined to exempt this group upfront, the Regulations would need to be amended to provide for an express exemption (as was done for those attending the sentencing). However, it might be difficult to progress a Regulatory change in time for the group's arriving. We understand that any attendees would likely arrive in February 2021 in order to complete MIQ in time for the anniversary on 15 March 2021.
69. We will continue to work with the Ministry of Foreign Affairs and Trade to monitor any changes required.

## **Information gaps, minor tweaks to Regulations and operations**

70. We will also look to address other operational matters and minor tweaks to the Regulations to ensure the MIQ fees regime is functioning the way it should be. This work includes considering:
  - Waivers – clarifying who should be able to apply for a fee waiver (for example, most critical workers, particularly those with employers, should not be able to apply for a fee waiver);
  - Improving and supporting information sharing processes around verifying liability of MIQ charge and onwards addresses (invoicing);
  - Clarifying definitions within the Regulations to support the operations of the fees regime.

## **We understand there are some changes you would like to progress quickly**

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71. We understand you would like to see some immediate changes to the fees settings to extend the period from 90 days to 120 days for a person visiting New Zealand to be exempt from MIQ fees.
72. Cabinet also agreed on 16 November 2020 to recover a higher level of cost for MIQ services from all employers of critical workers, based on the average cost, currently estimated to be \$4,722 per person, through a contract with the employer or industry group.

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<sup>7</sup> Section 8 of the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020.

- 73. We will work to implement contractual arrangements for large groups of critical workers, but charging employers of all critical workers the higher fee would be most efficiently achieved through changes to the Regulations.
- 74. Other settings in the Regulations will remain the same, so those currently liable for a fee who are not critical workers will still pay the \$3,100.

**Timing considerations for any potential changes**

- 75. Amending the fee Regulations requires regulatory impact analysis, Cabinet process and drafting by Parliamentary Counsel. There are four weeks of Cabinet meetings until Christmas.
- 76. The table below sets out the steps required for Regulation change and the dates to be met if Regulations were to be made before Christmas. This timetable would be very tight and require truncating or waiving a number of usual steps and process.
- 77. This would require lodging a Cabinet paper next week, only allowing two weeks for drafting, giving little time for MBIE to consult with agencies and stakeholders on proposals. This time frame allows the minimum possible time for each step, and does not allow for any slippage in deadlines. It also depends on your ability to consider and give your approval to the proposal in less than 24 hours next week, in order for the papers to be lodged in time for Cabinet on 30 November.
- 78. The Regulations could come into force sooner than 28 days after regulations are notified in the Gazette if there are grounds and Cabinet agreed to waive the 28 day rule.

**Steps required for Regulation change – shortest possible timeframes**

Cabinet paper and regulatory impact analysis to Minister for COVID-19 Response	25 November
Lodge paper and amendment regulations with Cabinet Office	26 November
Cabinet agrees policy	30 November
PCO starts drafting	30 November
Cabinet (LEG) paper and Regulations lodged with Cabinet Office	10 December
Cabinet agrees regulations and Executive Council	14 December
Regulations come into force	28 days after notification in the Gazette

**You could address some things before Christmas, but it is tight**

- 79. It is possible, though not recommended, to amend the Regulations to change the 90 day exemption to 120 days this side of Christmas. This would be very tight.
- 80. The earliest this change could come into force is 15 December if the 28 day rule was waived, and could not apply retrospectively to those people who have already entered MIQ. It could only apply prospectively to those who enter MIQ after 15 December. Early commencement could also unfairly impact those people who have booked flights and secured a place in MIQ after 15 December on the basis of current settings.



81. You could also change critical worker settings in the Regulations before Christmas, but timing will mean it could be blunt. You could amend the Regulations to make critical workers liable for a higher fee of \$4,722 + GST (the average weighted cost of MIQ across the 32 facilities). You could also amend the Regulations to allow MIQ to require employers to pay on behalf of critical workers, and/or in advance, where appropriate. Not all critical workers have an existing employer and there will be operational limitations.
82. Alternatively you could make employers 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. You could not, however, increase the fee charged for MIQ through changes to the immigration instructions.
83. In either case, there would be no time to consider the complexities discussed above for different types of critical workers, or groups similar to critical workers. This could result in unintended consequences and Regulations that require amending soon after.
84. We also note that the Cabinet paper seeking increased funding for MIQ is being considered on Cabinet Business Committee on 25 November. Until the funding comes through, MIQ is not able to operate at full strength, making resourcing up to support changes to invoicing processes this side of Christmas challenging.
85. Regardless of whether the Regulations are changed, per Cabinet's decision on Monday 16 November, we will pursue bespoke contractual arrangements with the incoming large groups of critical workers (e.g. RSE workers) and seek that employers pay a flat fee of \$4,722 + GST per person. This contractual fee will have to include the additional services required for these groups, such as translation services or requirements to have a dedicated facility.
86. We also suggest that if Regulations are to be amended before Christmas, an exemption from fees is created for those attending the second anniversary of the Christchurch attacks.

## **We recommend seeking policy decisions and amending the Regulations in the New Year**

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87. The Regulations were originally made at pace, which resulted in known issues not being able to be addressed and some unintended consequences. To avoid this again, we recommend working through the policy issues with other agencies and provide you advice on proposals this side of Christmas. We would then seek policy decisions and amend the Regulations in the New Year.
88. This tranche of work could address the following issues:
  - Amending the fee for critical workers (and making the employer liable, if not progressed earlier), including ensuring correct settings for critical health workers, air crew and maritime crew
  - Changing the 90 day exemption to 120 days (if not progressed earlier)
  - Changes required to support Safe Travel Zones
  - Minor changes to support operations of the fees system.
89. This timing would allow for the complexities discussed above in relation to critical workers to be fully considered. It also allows more time for analysis and discussion with other agencies and trans-Tasman counterparts on settings for safe travel arrangements.
90. This could be progressed on the following timetable.

Briefing to Minister seeking agreement to policy proposals	Mid-December
Draft Cabinet paper and regulatory impact analysis to Minister	January
Cabinet policy decisions	Early February (when Cabinet meetings resume)
Drafting regulations	February
Cabinet and Executive Council approval of regulations	Early March

## **We are also planning a broader first principles review of MIQ cost recovery**

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91. In addition to any immediate changes that could be made to improve the fees system, MBIE is planning a wider, first principles review of the MIQ cost recovery system to ensure it aligns with the Government's objectives and is functioning well. We expect to undertake this work early in 2021.
92. By this point the fees regime will have been operating for nearly six months and we will be well placed to consider how the fees system is delivering on policy objectives, whether these objectives themselves have shifted, and if there are alternative models of cost recovery that should be considered.

## **Next steps**

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93. If your preferred approach is to amend the Regulations before Christmas to change the 90 day exemption to 120 days, and make employers liable for higher MIQ fees, we will work to provide you with a briefing, Cabinet paper and regulatory impact analysis by Wednesday 25 November.
94. If you would like to use amendments to the immigration instructions to make employers liable for all critical workers' MIQ charges, we can work with immigration colleagues to progress changes via that avenue relatively quickly.
95. Alternatively, if you would like us to address the wider suite of potential improvements in one set of changes to the Regulations, we will undertake further work and provide you with a briefing seeking your agreement to policy proposals by mid-December.