



AIDE MEMOIRE

Cabinet paper: Class exceptions to border restrictions considered by Delegated Ministers for Cabinet approval - Background on MIQ charging options for Cabinet meeting 16 November

Date:	12 November 2020	Priority:	High
Security classification:		Tracking number:	2021-1300

Information for Minister

Hon Chris Hipkins
Minister for COVID-19 Response

Contact for telephone discussion (if required)

Name	Position	Telephone	1st contact
Privacy of natural persons	Policy Director, Managed Isolation and Quarantine Unit, MBIE	Privacy of natural persons	✓
Privacy of natural persons	Principal Policy Advisor		

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Withdrawn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 provide you with background information on Managed Isolation and Quarantine (MIQ) charging options for RSE workers to support discussion at Cabinet when it considers the Minister of Immigration's paper on class exceptions to border restrictions on Monday 16 November.

Privacy of natural persons

Policy Director, MIQ Policy
MBIE

12 / 11 / 2020

Background

1. On 16 November, the Minister of Immigration, Hon Kris Faafoi is presenting the *Class exceptions to border restrictions considered by Delegated Ministers for Cabinet approval* paper to Cabinet. This paper seeks agreement to decisions made in principle by the Ministerial Group considering class exceptions, on exceptions for Recognised Seasonal Employer (RSE) workers and shearers.
2. The paper includes options for charging employers for RSE workers' stay in MIQ.
3. MIQ Policy was consulted on this paper and we are supportive of the proposals. This aide memoire provides you with background information on options for charging RSE workers for MIQ, to support you in this meeting.

MIQ fees regime

4. Amendments to the COVID-19 Public Health Response Act 2020 introduced the MIQ fees regime and established clear legal authority for MBIE to charge people entering New Zealand for the costs of their stay in MIQ. The COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 (the Regulations) came into force on 11 August 2020 setting out who would be charged. All critical workers (visa class) entering New Zealand are liable for charges.
5. Prior to the introduction of the Regulations, there was no legal authority for MBIE to charge critical workers for MIQ. Up until that point invoices were generated by, and payments made to, hotels, to cover the direct costs of critical workers' accommodation, food and ancillary services.
6. The prescribed fee in the Regulations is set at \$3,100 (incl GST) and can only be charged to individuals (if two adults share a room this cost is \$3,100 plus \$950 for the second person). The \$3,100 is subsidised and does not reflect actual costs of MIQ. The fee was set at a low level to avoid over-recovering and to ensure that it was not an unjustified limitation on New Zealanders' right to enter New Zealand under the New Zealand Bill of Rights Act 1990 and the Immigration Act 2009.
7. 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).
8. Where groups have been approved to have non-standard managed isolation facility arrangements, a contracting mechanism outside of the Regulations has been used to both partially recover the costs of MIQ and the cost of the additional arrangements required, directly from industry bodies and employers. This has been the case with a number of sports teams. New Zealand Rugby, for example, paid \$7,000 (excl GST) per person for managed isolation and bespoke wraparound supports (including training facilities) for the Australian Rugby Team.

9. The table below shows how the current prescribed fees for a single occupant compares to average MIQ MBIE-related costs for a 14-day stay (as of 5 November 2020).

	Current Fees in Regulations	Cost to Government
<i>Standard 14-Day MIQ stay per person</i>	<i>First/single occupant</i>	<i>Weighted average across MIQ network (single occupant)¹</i>
Hotel Facility (incl food)		\$3,371
Transport ²		\$251
Operational		\$508
Support		\$592
Total excl GST	\$2,696	\$4,722
Total incl GST	\$3,100	\$5,430

MBIE is reviewing fees for all critical workers in parallel

10. MBIE is reviewing how MIQ fees are charged for all critical workers in the Regulations. The two key changes being considered are to set a higher-fee closer to the actual costs of MIQ for critical workers and ensure employers (or sponsoring agencies) of critical workers can be liable for charges.
11. This work has complexities that require consideration to ensure the right outcomes. For example, MBIE is working with the Ministry of Health to determine whether critical health workers should be charged a higher fee. Similarly, there are questions around whether any changes to fee settings in the Regulations for critical workers should extend to air crew and maritime crew on the basis that their managed isolation is required as part of their employment.
12. There are also additional fees-related changes that might be required in relation to Safe Travel Zone arrangements with Australia and the Realm countries.
13. There are complexities in determining the appropriate fee level for critical workers. Actual MIQ costs are hard to estimate in advance as they vary greatly between facilities. And at the moment we only have information to accurately apply average MBIE costs, which do not take into account services provided by partner MIQ agencies.
14. You have indicated to officials that you would like to progress changes to critical workers in the Regulations, and to amend the eligibility timeframe so that New Zealand citizens or residents are liable for MIQ fees if they return to New Zealand for a period of less than 120 days (rather than the current setting of 90 days). MBIE will provide you with initial advice and options for timing to progress changes on these issues and any changes required to support the Safe Travel Zone arrangements by Wednesday 18 November.
15. Any changes will require amending the Regulations, which involves Cabinet policy decisions, drafting by Parliamentary Counsel, and Cabinet and Executive Council approval.
16. Additionally, 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.

¹ Based on an occupancy rate of 90%.

² 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.

Options for charging RSE workers for MIQ now

17. The Immigration paper notes that if Ministers wish to alter the fees arrangements for RSE workers ahead of the broader fees review work there are two options:
 - i. Charge the fees as prescribed in the regulations but add a condition to the visa that requires the employer to pay the fee
 - ii. Contract with the employer (or industry group) directly for the fees plus an additional amount to make the sum payable in line with the average full cost. This is currently estimated to be \$4,722 per person (as set out in the table in paragraph nine above).
18. The paper seeks Cabinet's agreement to RSE workers entering New Zealand between mid-January and mid-March 2021.
19. The paper recommends option (i). Opting for the lower rate now would not preclude Ministers from increasing fees for critical workers at a later point through the Regulations. If Cabinet increases the charges for critical workers in the future, but before all RSE groups come into New Zealand, there is a risk that some could be subject to a higher fee in in the Regulations. We will include advice to you on this separately.
20. Option (ii) would set a precedent and become the starting point for all other class exemptions for critical workers until such time as the Regulations are changed. There is a risk that this creates an inconsistent fees system in the interim, as critical workers who are not part of class exceptions will be charged the lower fee.
21. If option (ii) is chosen, all groups of critical workers who come in as class exceptions should be charged the same \$4,722 (including the group of 60 shearers the Minister of Immigration is seeking Cabinet's agreement to) to prevent disparity.
22. The idea of charging employers for extended stays in MIQ resulting from positive COVID-19 tests has been suggested. There is not currently any part of the Regulations that allows us to do this. We also understand that there may be issues to work through with the Ministry of Health relating to charging for public health services.