



## BRIEFING

### MIQ charges for critical workers – draft Cabinet paper

<b>Date:</b>	1 December 2020	<b>Priority:</b>	High
<b>Security classification:</b>		<b>Tracking number:</b>	2021-1548

Action sought		
	Action sought	Deadline
Hon Chris Hipkins <b>Minister for COVID-19 Response</b>	<b>Provide</b> feedback to MBIE on the recommendations in this paper	3 December 2020
	<b>Consult</b> your Ministerial colleagues on the draft Cabinet paper: <i>COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2020</i> , subject to any feedback on the proposals in this briefing	3 December to 8 December 2020
	<b>Lodge</b> the final Cabinet Paper for consideration by Cabinet on Thursday 14 December 2020	10 December 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	
Privacy of natural persons	Senior Policy Advisor, MIQ Policy	Privacy of natural persons	

The following departments/agencies have been consulted
Ministry of Transport, Ministry of Foreign Affairs and Trade, Ministry of Health, MBIE (immigration policy), Immigration New Zealand, and Ministry for Primary Industries were consulted on the attached draft Cabinet paper.

Minister's office to complete:

- |   |  |
|---|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Declined            |
| <input type="checkbox"/> Noted                | <input type="checkbox"/> Needs change        |
| <input type="checkbox"/> Seen                 | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn           |

Comments



# BRIEFING

## MIQ charges for critical workers – draft Cabinet paper

Date:	1 December 2020	Priority:	Medium
Security classification:		Tracking number:	2021-1548

### Purpose

To seek your agreement to additional aspects about how critical workers will be charged for stays in managed isolation and quarantine (MIQ), provide you with information about how we plan to implement the changes, and to seek feedback on the attached draft Cabinet paper *COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2020 (Annex Two)*.

### Recommended action

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

- a **Note** that in order to give effect to Cabinet's decisions of 16 November 2020 about critical workers, you agreed to take a paper to Cabinet seeking amendments to the MIQ Charges Regulations [briefing 2021-1156 refers]

*Noted*

- b **Agree** to charge a flat fee of \$4,800 + GST (\$5,520 including GST) per person for critical workers and any partners or dependent children (3 years or older) who accompany them

Agree /  Disagree /  Discuss

- c **Agree** that dependent children under 3 years old are not charged

Agree /  Disagree /  Discuss

- d **Agree** that employers and supporting agencies of critical workers will not be able to seek fee waivers on grounds of undue financial hardship or special circumstances

Agree /  Disagree /  Discuss

- e **Agree** that the new fee settings for critical workers will not apply to critical health workers

Agree /  Disagree /  Discuss

- f **Agree** that the new fee settings for critical workers will commence on 1 January 2021 and apply to all critical workers who arrive in New Zealand after that date, except for the second tranche of deep sea fishing crew who will be charged under current fee settings

Agree /  Disagree /  Discuss

- g **Note** that until the Managed Isolation Allocation System and information sharing arrangements with Immigration New Zealand are improved (expected in February 2021 at the earliest), MIQ will rely on individual critical workers not travelling as part of large groups to self-identify

*Noted*

h **Note** that MIQ will be able to ensure the higher fee is charged to the employers or supporting agencies of Recognised Seasonal Employer (RSE) workers through a process with Immigration New Zealand and industry bodies

*Noted*

i **Note** the 2,000 RSE workers approved by Cabinet will make up the majority of critical workers entering New Zealand before we expect the Managed Isolation Allocation System and information sharing improvements are expected in February 2021

*Noted*

j **Agree** (subject to your feedback on the proposals in this briefing) to circulate the draft Cabinet paper for consultation with your Ministerial colleagues.

Agree /  Disagree /  Discuss

Privacy of natural persons

**Policy Director, MIQ Policy**  
MBIE

1 / 12 / 2020



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

2 / 12 / 20  
..... / ..... / .....

## Background

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1. On 16 November 2020, in making decisions about border exceptions for Recognised Seasonal Employer (RSE) workers, Cabinet agreed [CAB-20-MIN-0473 refers]:
  - (a) to recover a higher level of cost for managed isolation and quarantine 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
  - (b) that the MIQ fees should be paid upfront by employers of critical workers.
2. On 19 November, we advised you that the most effective way to give effect to Cabinet's decisions is by amending the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 (the Regulations) [briefing 2021-1156 refers].
3. You agreed to amend the Regulations to increase the fee for critical workers and allow MIQ to require employers to pay on behalf of critical workers, and/or in advance, where appropriate. You also agreed 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).
4. This paper provides further advice about how critical workers could be charged under the Regulations and provides you with information about how we plan to implement the changes. We seek your agreement to those aspects and feedback on the attached draft Cabinet paper at **Annex Two**.

## We propose to charge a flat fee on a per person basis

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5. As of 26 November 2020, the average weighted cost for a single person in MIQ for 14 days is \$4,800 + GST (\$5,520 including GST). This only covers MBIE related costs and does not include Health costs or costs for other services provided by partner MIQ agencies (e.g. the Aviation Security Service and New Zealand Defence Force). This means the government would still be subsidising a portion of costs for critical workers.
6. We propose to charge this fee on a per person basis, regardless of how many people are in a room. It will apply to critical workers and any partners or dependent children they bring with them. We do not propose to charge dependent children under 3 years old.
7. This differs from the current fee structure in the Regulations where the first or only person in a room is charged \$3,100 (including GST), and additional people in the room are charged less (\$950 for an adult and \$475 for a child 3 years or older). The diagram at **Annex One** illustrates the tiered fees the new proposal will create in the Regulations.
8. The average weighted cost is calculated on a rate of 1.35 people in a room, which is the average number of people per room across facilities. We do not have the data available to determine whether critical workers would have a higher average number of people per room than others in MIQ.
9. Critical workers may choose to share a room with each other for cultural or wellbeing reasons, or with family who accompany them. Employers or supporting agencies can include partners or dependent children of critical workers in requests for border exceptions. Whether family is permitted for class exceptions for large groups of critical workers is decided at the time the exception is granted.

10. There is no data available on the number of people entering as families of critical workers. We expect that most critical workers do not bring families because their roles, by definition, are time-limited and their visas can only be granted for up to six months. Of the class exceptions granted for large groups of critical workers so far, only rural contractors and vets were eligible to bring partners or dependents.
11. Having a set per person fee, regardless of actual room configuration arrangements, will provide upfront clarity and transparency to employers and supporting agencies, and is also necessary to enable the possibility of invoicing in advance. It also pre-empts and covers increased costs where those sharing a room are placed in separate rooms if they become sick or there is an outbreak in a facility, as happened with the deep sea fishing crew in Christchurch.
12. The COVID-19 Public Health Response Act 2020 allows charges to be set at a level and in a way that takes into account costs or potential costs that are not directly incurred by the specific individual paying the charge, but which are costs or potential costs arising indirectly in relation to the use of MIQ by one or more classes of persons.
13. The chance of over recovery, even where critical workers share rooms or bring family, is low. The charge is still lower than the actual costs of stay in MIQ because it does not include health costs or services provided by Defence, Police and Aviation Security.

## **We propose to carve out critical health workers**

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14. Critical health workers is a border exception, separate from other critical workers. We advised you that charging critical health workers a higher fee could negatively impact the health workforce at this crucial time. It could also pose difficulties because they do not always have an employer or supporting agency [briefing 2021-1156 refers].
15. After further consultation with the Ministry of Health, we propose that the proposed fees and settings for critical workers should not apply to critical health workers at this point in time. Critical health workers will continue to be charged under current settings. We will consider the settings for critical health workers together with other groups that are not strictly “critical workers” such as air and maritime crew, in early 2021.

## **Limiting the ability for critical workers to seek fee waivers**

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16. In August 2020, Cabinet agreed that critical workers, including critical health workers, would not be able to apply for waivers. Due to the speed of drafting, this restriction was not included in the Regulations. Since the Regulations came into force, there have been some waiver applications for critical health workers, but none from other critical workers.
17. As employers or supporting agencies receive the direct benefits of bringing critical workers into the country, the paper seeks agreement to clarify that employers or supporting agencies of critical workers should not be able to apply for a fees waiver on grounds of undue financial hardship or special circumstances. If an individual critical worker is liable because there is no employer or supporting agency, we propose the individual should be able to apply for a waiver. We also propose that critical health workers continue to be able to apply for waivers.
18. Employers and supporting agencies will be able to apply to defer the time of payment (beyond 90 days), and to pay charges by instalment if financial hardship would otherwise result. These applications are decided by the chief executive of MBIE at their discretion. This will help to ensure that there is flexibility for small to medium enterprises who may bring in critical workers.

## **Commencing the new fee settings**

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19. We propose the new fee settings should come into force on 1 January 2021, so that all critical workers who arrive in New Zealand after that date will be charged the higher fee. This will ensure the new fee settings are in place for RSE workers and will allow time for the new settings to be operationalised to the extent they can at MIQ.
20. We do not consider there is a risk of an influx of critical workers arriving between when the Regulations are published and when they come into force on 1 January 2021 to avoid the higher fee. There is very limited availability in the MIQ system for the rest of the year. The chance entering in the two week window if they do not already have a booking is low.
21. The exact date of arrival of the second tranche of deep sea fishing crew has not yet been confirmed. We will ensure that existing fee settings apply to them if they arrive after 1 January 2021.
22. Vets and rural contractors were approved as class exceptions at the same time as the deep sea fishing crew under existing fee settings. However, because vets and rural contractors come into New Zealand as individuals, we do not have the same ability to identify them or when they are coming. We propose that these individual critical workers are charged under the new settings if they enter after 1 January 2021 (noting below the implementation issues with recovering the higher fee for individual critical workers initially).

## **The draft Cabinet paper reflects these proposals in addition to those you previously agreed**

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23. We seek your agreement to the proposals above. In addition to those, the Cabinet paper reflects the following policy you previously agreed [briefing 2021-1156 refers].

### **Employers or supporting agencies will be liable where there is one**

24. Under current border settings all critical workers must have an employer or supporting agency to apply for a border exception. However, to ensure the Regulations are durable if border settings change, we propose to make the individual critical worker liable if there is no employer or supporting agency.

### **Flexibility to require payment in advance**

25. There are currently operational limitations to issuing invoices in advance. For example, it is difficult to identify incoming critical workers (and their employers or supporting agencies) who are not part of large groups approved as class exceptions so that they can be invoiced in advance. Therefore, the paper seeks to allow MIQ the flexibility to decide when payment in advance is appropriate. We set out below how MIQ proposes to implement the new fees initially.

## **Implementing the increased fee for critical workers**

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### **Charging other critical workers**

26. Under the current system, identifying critical workers coming through MIQ is challenging unless they are large groups agreed in advance and we have an agreed point of contact such as an industry body.
27. The Managed Isolation Allocation System (MIAS) currently does not have the functionality to identify the immigration status of people entering MIQ. Also existing information sharing arrangements did not anticipate the MBIE MIQ function and they struggle to provide the appropriate authority for MIQ to share and use information about individuals. Enhancements

are being made to MIAS to address this, alongside improvements on how we share information between MIQ and Immigration New Zealand. These improvements are not expected until February 2021 at the earliest.

28. In the interim, MIQ will need to rely on people self-identifying as critical workers to charge them a higher fee. [REDACTED] Free and frank opinions [REDACTED]  
[REDACTED] Under current border settings we expect the number of people travelling independently will be minimal and we expect they would still be charged the current \$3,100 fee.

### Charging RSE workers

29. RSE workers can be identified in advance due to the joint planning between MIQ and the RSE team in Immigration New Zealand. It is therefore easier to invoice the employer the higher fee under the amended Regulations.
30. We had considered taking a comparable approach with RSE groups as we have done with sports groups, [REDACTED] Legal professional privilege [REDACTED]  
[REDACTED] The best mechanism available to achieve the Cabinet decision in the short term is a change to the Regulations.
31. Following the changes to regulations which we propose should come into force on 1 January 2021, the employers of RSE workers will be invoiced the full amount outlined in the Regulations (\$4800 + GST). The 2,000 RSE workers approved by Cabinet will make up the majority of critical workers entering New Zealand before February 2021.
32. To manage this process we believe the best approach would be to set up a process with Immigration New Zealand and industry bodies to identify who will be entering MIQ, when they will enter and who will be liable to pay. Issuing invoices in this way will need to be a manual process and we will require additional personnel to manage the surge in capacity. Taking this approach will allow us to report back to you on the implementation of the increased fee, noting that there will likely be ongoing media interest in our approach to critical workers.

### Criteria for cost recovery

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33. Under the COVID-19 Public Health Response Act 2020, you must be satisfied that the charges:
- (a) relate to managed isolation and quarantine facilities costs (including direct and indirect costs)
  - (b) recover from any class of persons no more than an estimate of the actual and reasonable managed isolation or quarantine facility costs incurred in relation to that class (including both direct and indirect costs)
  - (c) 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
  - (d) do not limit or are justified limits on the rights and freedoms in the New Zealand Bill of Rights Act 1990.
34. The Act also requires you to consult with the Minister of Health.

35. As discussed above, the proposed fee for critical workers and their partners/dependent children relates to managed isolation and quarantine costs and is less than the actual costs of MIQF because it does not include costs of MBIE's partner MIQ agencies.
36. The proposal is to exclude employers or supporting agencies of critical workers from the ability to seek waivers on grounds of undue financial hardship or special circumstances. Employers and supporting agencies receive the economic benefit of the critical worker coming to New Zealand, so it is not appropriate that they be able to seek waivers on undue financial hardship grounds. Deferred payments and payment by instalment in the case of financial hardship will continue to be available.
37. Under the New Zealand Bill of Rights Act 1990, New Zealand citizens have a right to enter New Zealand. Permanent residents also have a right to enter New Zealand under the Immigration Act 2009. The proposed amendments to how critical workers are charged do not engage the right to enter New Zealand because critical workers do not have a protected right to enter New Zealand in the same way that citizens and permanent residents do.
38. We have also considered whether the proposed fees for critical workers could be discriminatory. Everyone has the right to be free from discrimination on prohibited grounds under the New Zealand Bill of Rights Act 1990. Prohibited grounds of discrimination include ethnic or national origins, which includes nationality or citizenship.
39. The differential treatment of critical workers is not based on national origin, but instead is based on the legal basis in which the person arrives in New Zealand. Preferential treatment under the Regulations is justified and given to those who have a right to enter New Zealand, as opposed to critical workers who are only permitted to enter New Zealand based on the economic and social value their entry provides to New Zealand.


## **Next steps**

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40. Subject to your agreement to the proposals in this briefing and feedback on the attached draft Cabinet paper, officials will provide you with a revised draft Cabinet paper for consultation with your colleagues.
41. We are working with Treasury to ensure that the impact analysis is completed to sit alongside the Cabinet paper when it is lodged.
42. We will provide the final paper to lodge with the Cabinet Office by 10am on Thursday 10 December for Cabinet to consider on Monday 14 December. The Parliamentary Counsel Office lodges Regulations directly with the Cabinet Office. We will provide a copy of the near final Regulations and the summary impact analysis assessment to your Office for your information.



## Annex One – proposed tiered fees structure

	Who?	MIQ fees	Rationale
<p>Less government subsidy</p>  <p>More government subsidy</p>	<p>Critical workers and any partners or dependent children (employer or supporting agency liable, if there is one; or individual)</p>	<p>\$5,520 (incl GST) <u>per person</u> (no charge for children under 3 years old)</p> <p>MBIE can require payment in advance (where appropriate)</p> <p>No waivers for employers or supporting agencies</p>	<p>Employers and supporting agencies receive the benefit of critical workers</p> <p>Critical workers are not New Zealanders (no right to enter NZ)</p>
	<p>NZ citizens and residents who:</p> <ul style="list-style-type: none"> <li>are overseas and return to NZ for less than 90 days</li> <li>left NZ after the Regulations came into force and return at a later date.</li> </ul> <p>Temporary visa holders (incl students, critical health workers, air and maritime crew)</p>	<p>\$3,100 (incl GST) for the first or only person in a room</p> <p>\$950 (incl GST) for an additional adult in the room</p> <p>\$475 (incl GST) for a child 3 years or older in the room.</p> <p>Invoiced on or after date they leave MIQ</p> <p>Fee waivers are available in cases of undue financial hardship or other special circumstances</p>	<p>Settings ensure that the fees do not present an unjustified barrier on the rights of NZ citizens and permanent residents to return to NZ</p> <p>Deter short term or unnecessary travel by New Zealanders which increases risk of bringing COVID-19 to NZ</p>
	<p>NZ citizens and residents who left NZ before the Regulations came into force and return to NZ for more than 90 days</p> <p>Temporary visa holders ordinarily resident in NZ on 19 March 2020 and left NZ before that date</p>	<p>Not liable for charges<sup>1</sup></p>	<p>Settings ensure that the fees do not present an unjustified barrier on the rights of NZ citizens and permanent residents to return to NZ</p> <p>Support New Zealanders returning home</p>

<sup>1</sup> Also exempt from charges are people in section 32E of the Act and regulation 8 of the Regulations, e.g. diplomats, medical air transfers, refugees, NZ residents returning home to the Cook Islands etc.

***Annex Two – draft Cabinet paper COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2020***

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**In Confidence**

Office of the Minister for COVID-19 Response

Chair, Cabinet

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

**Proposal**

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

**Executive summary**

- 2 Managed isolation and quarantine (MIQ) is a public health intervention, playing a central role in New Zealand's COVID-19 elimination strategy by preventing community transmission of imported COVID-19 cases. The COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 (the Regulations) prescribe charges for people entering MIQ facilities. The prescribed charges, which came into force on 11 August 2020, were set at less than half the total MIQ costs at the time. The fees were designed to balance the rights of New Zealanders and permanent residents to enter New Zealand with the need to have an economically sustainable MIQ system.
- 3 Because the Regulations were developed at pace, a charge closer to the actual costs of MIQ was not explicitly considered for those entering New Zealand on a border exception as critical workers. However, the rationale underpinning the prescribed charge in the Regulations does not apply to critical workers who do not have a protected right to enter New Zealand. Cabinet intended that the charges would be kept under regular review to ensure that they remain appropriate in light of any changes to circumstances domestically or globally.
- 4 On 16 November 2020, in making decisions about border exceptions for Recognised Seasonal Employer (RSE) workers, Cabinet agreed [CAB-20-MIN-0473]:
  - 4.1 to recover a higher level of cost for MIQ services from all employers of critical workers, based on the average cost, currently estimated to be \$4,722 per person, through a contract with the employer or industry group;
  - 4.2 that the MIQ fees should be paid upfront by employers of critical workers.

- 5 In order to implement Cabinet's decisions, the Ministry of Business, Innovation and Employment (MBIE) would need to contract directly with employers or supporting agencies on top of the Regulations. This can only be done to recover additional services provided, for example for sports teams who enter New Zealand as critical workers and who require additional wraparound services and facilities. The most effective way to give effect to Cabinet's decisions is through amendments to the Regulations.
- 6 In addition to decisions already taken by Cabinet, I am seeking agreement to amend the Regulations to make the fee a per person charge for critical workers and any partners or dependent children (3 years or older) who accompany them, and to clarify that employers or supporting agencies of critical workers should not be able to apply for a fees waiver. I am not intending to make any changes to the fees settings for critical health workers (border exception) at this point in time.
- 7 The government will continue to subsidise MIQ for critical workers entering New Zealand, however the proposed higher fee better balances the employer's contribution alongside the government's contribution.
- 8 The COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2020 give effect to Cabinet's decision and these further proposals. I seek authorisation to submit the Amendment Regulations to Executive Council.
- 9 The Amendment Regulations have been developed quickly. There are risks associated with this, including unintended outcomes and introducing a lack of parity between MIQ fees for critical workers and other groups (such as international students, and air and maritime crew). The pace of these changes does not allow for the development of a more nuanced charging system for critical workers and similar groups. This will be considered in the broader review of the fees system that MBIE is planning to undertake in 2021.

## **Background**

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

- 10 Accommodating people travelling to New Zealand while maintaining our critical border defences comes at significant cost to taxpayers. MIQ is a complex system of accommodation facilities, personnel, information systems, and testing regimes and supporting services that enable positive COVID-19 cases to be detected early after arrival to New Zealand and to be isolated from the community.
- 11 The COVID-19 Public Health Response Act 2020 establishes clear legal authority for MBIE to charge people entering New Zealand for the costs of their stay in MIQ. It is a purpose of the Act to support a public health response to COVID-19 that is economically sustainable and allows for the recovery of MIQ costs. The Regulations came into force on 11 August 2020.

**IN CONFIDENCE**

- 12 The fees settings aim to strike a balance between the rights of New Zealanders to enter New Zealand and having an economically sustainable MIQ system.
- 13 The fees set out in the Regulations are:
- 13.1 \$3,100 (incl GST) for the first or only person in the room;
  - 13.2 \$950 (incl GST) for an additional adult in the same room;
  - 13.3 \$475 (incl GST) for an additional child (3-17 years) in the same room;
  - 13.4 No charge for a child under three years old sharing a room.
- 14 New Zealand citizens and residents<sup>1</sup> are liable for a charge if:
- 13.5 they are currently overseas and return to New Zealand for a period of less than 90 days; or
  - 13.6 they left New Zealand after the Regulations came into effect (11 August 2020) and return at a later date.
- 15 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.
- 16 Full or partial MIQ fee waivers are available in cases of undue financial hardship or other special circumstances. The Chief Executive of MBIE can also defer payment due dates in appropriate situations or allow for payment by instalment if financial hardship would otherwise result.
- 17 Individuals are liable for the payment of fees. MBIE can send invoices to the employers or supporting agencies of critical workers, but liability for any debt resulting of non-payment sits with the individual employee. Invoices are issued on or after the day a person leaves MIQ.

*The introduction of the Regulations made critical workers liable for the prescribed fees, but these are subsidised by the government*

- 18 The New Zealand border is currently closed to most people except citizens and residence class visa holders or those who come in as an exception to border restrictions. People who enter through a border exception must apply through Immigration New Zealand and have a critical purpose for coming to New Zealand.

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<sup>1</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.

- 19 Two of the categories of border exceptions are “critical health workers” and “other critical workers”<sup>2</sup>. Employers or a supporting agency must submit a request for approval of critical workers (including any partners or dependent children) to Immigration New Zealand. If a request is successful, the worker will be invited to apply for a Critical Purpose Work Visa. Cabinet can also approve classes of workers to be critical workers (e.g. deep sea fishing crew and RSE workers).
- 20 The current Regulations specify that critical workers and critical health workers are liable to pay the MIQ fees prescribed in the Regulations.
- 21 The prescribed fee is based on the costs of accommodation and food only at the lowest-cost facilities, to ensure that no users are overcharged from a cost-recovery perspective. The current fee is significantly less than the average MBIE-related costs across the MIQ network, and likely lower than the average amount paid in respect of critical workers prior to the Regulations coming into force<sup>3</sup>.
- 22 A different fee for critical workers was not explicitly considered during the development of the Regulations due to the speed of policy development and drafting. For similar reasons, the Regulations did not include the ability to make employers (or supporting agencies) of critical workers liable, only individuals (though Cabinet’s and Ministers’ intentions were to charge employers directly [CAB-20-MIN-0268]).

*It has always been intended that the fees would be kept under regular review, in light of any changes to circumstances domestically or globally*

- 23 The government has indicated it intends to gradually open up New Zealand’s border to support the economic and social recovery. Cabinet recently approved class exceptions for a number of large groups of critical workers, including 570 deep sea fishing crew, 210 rural contractors and up to 2,000 RSE workers.
- 24 The rationale underpinning the Government subsidising the costs of MIQ and having individuals liable for this fee is not relevant to critical workers. Critical workers do not have a protected right to enter New Zealand.
- 25 Furthermore, critical workers enter New Zealand primarily for economic or job-related reasons, and the workers, employers and supporting agencies receive the direct benefits of bringing critical workers into the country. Organisations should be expected to cover MIQ charges as part of the business’s costs.

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

<sup>3</sup> 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).

- 26 Continuing to subsidise the costs of MIQ for critical workers to the extent that the government is currently doing would reduce the fiscal headroom that could be used to support the economic recovery.

**Policy**

- 27 On 16 November 2020, in making decisions about border exceptions for RSE workers, Cabinet agreed [CAB-20-MIN-0473]:
- 23.1 to recover a higher level of cost for MIQ services from all employers of critical workers, based on the average cost, currently estimated to be \$4,722 per person, through a contract with the employer or industry group
  - 23.2 that employers of critical workers should pay MIQ fees upfront.
- 28 In order to implement Cabinet's decision, MBIE would need to contract directly with employers or supporting agencies on top of the Regulations. This can only be done to recover additional services provided, for example for sports teams who enter as critical workers and who require additional wraparound services and facilities.
- 29 Given the number of employers or supporting agencies to potentially contract with, and the cost of administering each contract, it would be operationally complex and highly resource intensive to recover MIQ costs through contracts with employers or industry groups of all critical workers. Amending the Regulations is a more effective and efficient way to implement Cabinet's decision.
- 30 To implement Cabinet's 16 November 2020 decisions, the Amendment Regulations:
- 27.1 charge a higher fee for critical workers' stays in MIQ and make employers or supporting agencies liable for this fee (if there is no employer or supporting agency, the individual will be liable)
  - 27.2 allow MIQ to require payment in advance of a critical worker's arrival in New Zealand, where appropriate.
- 31 Under current border settings all critical workers must have an employer or supporting agency to apply for a border exception. However, to ensure the Regulations are durable if border settings change, I propose to make the individual critical worker liable if there is no employer or supporting agency.
- 32 There are currently operational limitations to issuing invoices in advance. For example, it is difficult to identify incoming critical workers (and their employers or supporting agencies) who are not part of large groups approved as class exceptions so that they can be invoiced in advance. Therefore, I propose to allow MIQ the flexibility to decide when payment in advance is appropriate. Operational improvements to support payment in advance are expected to be in place in the first quarter of next year.

- 33 In addition to the previously agreed matters, I seek approval today of the following:
- 30.1 that the higher fee for critical workers be a flat of \$4,800 + GST (\$5,520 including GST) per person for critical workers and any partners or dependent children (3 years or older) who accompany them
  - 30.2 that dependent children of critical workers under 3 years old are not charged
  - 30.3 that employers or supporting agencies of critical workers should not be able to apply for a fees waiver on grounds of undue financial hardship or special circumstances
  - 30.4 that the fee settings for critical workers will not apply to critical health workers
  - 30.5 that the new fee settings for critical workers will commence on 1 January 2021 and apply to all critical workers who arrive in New Zealand after that date, except for the second tranche of deep sea fishing crew who will be charged under current fee settings.

*Charging a flat fee of \$4,800 + GST on a per person basis*

- 34 As of 26 November 2020, the average weighted cost for a single person in MIQ for 14 days is \$4,800 + GST (\$5,520 including GST). This only covers MBIE related costs and does not include Health costs or costs for other services provided by partner MIQ agencies, such as the Aviation Security Service (AvSec), the New Zealand Defence Force (Defence) and New Zealand Police. This means the government would still be subsidising a portion of costs for critical workers.
- 35 The table below shows how the current prescribed MIQ fee for a single occupant compares to the average weighted cost for across the MIQ network.

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

	<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)*</i>
Hotel Facility (incl food)		\$3,427
Transport**		\$255
Operational		\$516
Support		\$602
<b>Total excl GST</b>	<b>\$2,696</b>	<b>\$4,800</b>
<b>Total incl GST</b>	<b>\$3,100</b>	<b>\$5,520</b>

\*Based on a hotel occupancy rate of 90%

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



- 36 I propose to charge this higher fee on a per person basis. It will apply to critical workers and any partners or dependent children they bring with them. I propose that dependent children under 3 years old will not be charged.
- 37 This differs from the current fee structure in the Regulations where the first or only person in a room is charged \$3,100 (including GST), and additional people in the room are charged less (\$950 for an adult and \$475 for a child 3 years or older).
- 38 Critical workers may choose to share a room with each other for cultural or wellbeing reasons, or with family who accompany them. Having a set per person fee, regardless of actual room configuration arrangements, will provide upfront clarity and transparency to employers and supporting agencies, and is also necessary to enable the possibility of invoicing in advance. It also pre-empts and covers increased costs where those sharing a room are placed in separate rooms if they become sick or there is an outbreak in a facility, as happened with the deep sea fishing crew in Christchurch.
- 39 The Act allows for charges to be set at a level that take into account the costs or potential costs arising indirectly in relation to a class of persons, even if a particular individual in the class does not incur those costs directly.
- 40 The chance of over recovery, even where critical workers share rooms or bring family, is low. The charge is still lower than the actual costs of stay in MIQ because it does not include health costs or services provided by Defence, Police and AvSec.
- 41 It is possible, however, that a flat per person fee (that does not allow for smaller additional rates for additional persons sharing the same room), will disincentivise room sharing among critical workers, which in turn could have a negative impact on overall MIQ capacity.

*Fees waivers on special circumstances and undue financial hardship grounds*

- 42 Under the current Regulations, full or partial MIQ fee waivers are available in cases of undue financial hardship or other special circumstances. This process was established to ensure that the fees do not present an unjustified barrier on the rights of New Zealand citizens and permanent residents to return to New Zealand.
- 43 In August 2020, Cabinet agreed that critical workers, including critical health workers, would not be able to apply for waivers [LEG-20-MIN-0141 refers]. Due to the speed of drafting, this restriction was not included in Regulations meaning that critical workers and critical health workers are able to apply for fees waivers.

- 44 As employers or supporting agencies receive the direct benefits of bringing critical workers into the country, the paper seeks agreement to clarify in the Regulations that employers and supporting agencies of critical workers should not be able to apply for a fees waiver on grounds of undue financial hardship or special circumstances. Critical health workers and individual critical workers where there is no employer or supporting agency will continue to be able to apply for waivers.

*The higher MIQ fee would not apply to critical health workers*

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

*The second tranche of deep sea fishing crew will be charged under current fee settings*

- 51 On 21 September 2020, Cabinet agreed to a critical worker border class exception for up to 570 deep sea fishing crew to enter New Zealand to work on identified fishing vessels for up to six months [CAB-20-MIN-0453].
- 52 The first tranche of deep sea fishing crew that entered New Zealand in mid-October were charged the current prescribed fee of \$3,100 (including GST). Given that Ministers approved the first and second tranches of deep sea fishing crew as classes of critical workers at the same time, I am proposing to charge the second tranche on the same basis. To charge a higher fee for the second tranche now creates parity issues.
- 53 It is not possible to provide the same treatment to other class exceptions made at the same time – for rural contractors and vets. These critical workers come in as individuals, rather than a large group and it is not possible to know when they arrive. I propose rural contractors and vets who enter MIQ after 1 January 2021 are charged the new fees.

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

- 54 There is significant variation in the costs of providing MIQ depending on the standard of the facility involved. This variable standard, combined with a higher but flat fee for critical workers, may generate complaints from employers of critical workers that they are paying too much for a facility which is below the average standard.
- 55 There is also a risk that introducing a higher MIQ fee for critical workers, but not for critical health workers or other groups similar to critical workers (such as students, air and maritime crew), creates an inconsistent fees system. It could have a disproportionate impact on small and medium-sized enterprises, particularly given that critical workers also bring benefits to the wider economy.
- 56 Consistency with other groups that are not critical workers needs to be considered, but there are a range of interests and complexities that require consideration to ensure the right outcomes. I have asked MBIE to explore these issues further with relevant agencies and stakeholders and consider whether the charge applied to critical workers can also be applied to other similar groups entering the country. I will report back to Cabinet on this in 2021.
- 57 There is also a risk that introducing a higher fee for critical workers could lead to a perception that critical workers would be prioritised in the Managed Isolation Allocation System (MIAS), because they are paying more for MIQ than other groups.

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

### **Timing and 28-day rule**

- 59 A waiver of the 28-day rule is sought so the Regulations can come into force on 1 January 2021. The purpose of the Amendment Regulations is to recover closer to the actual costs of MIQ from the employers and supporting agencies of critical workers. The majority of critical workers entering the country in the next few months will be RSE workers, arriving from mid-January to mid-March. Waiving the 28 day rule is necessary to ensure the new fee settings are in place for RSE workers and are able to be charged in advance of their arrival.
- 60 It is my intention that these changes will apply to any critical workers and their families entering New Zealand on or after 1 January 2020. I am aware that there will be a small proportion of critical workers who have already booked their place in MIAS before the amended Regulations come into force, however I judge that a line in the sand is the most fair and practicable way of operationalising the changes.

### **Compliance**

- 61 The regulations comply with the following:
- 57.1 the principles of the Treaty of Waitangi;
  - 57.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 (these are discussed further at paragraphs 69-71) and the Human Rights Act 1993;
  - 57.3 the principles and guidelines set out in the Privacy Act 1993;
  - 57.4 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

#### *Compliance with the principles of the Treaty of Waitangi*

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

*Compliance with relevant international standards and regulations*

- 63 A number of international law issues were factored into the original design of the fees system. The International Health Regulations 2005 (IHR) is an international treaty which sets out the measures states may take to respond to the international spread of diseases like COVID-19. Article 40 of the IHRs on its face prohibits charging short term travellers for their isolation or quarantine.
- 64 When progressing the original fees legislation, it was considered that there could be a credible legal argument that article 40 does not prohibit charging for isolation facilities as a pre-advertised, consensual condition of entry to New Zealand, and as part of a deliberate policy to open up, rather than restrict, entry to New Zealand's border.

**Statutory prerequisites before making the Regulations**

- 65 The COVID-19 Public Health Response Amendment Act 2020 requires that before I can recommend making regulations which set charges for MIQ, I must be satisfied of the following matters:
- 62.1 the charges concerned relate to managed isolation or quarantine facility (MIQF) costs (including direct and indirect costs);
  - 62.2 the prescribed charges recover from any class of persons no more than an estimate of the actual and reasonable MIQF costs incurred in relation to that class (including both direct and indirect costs);
  - 62.3 there is appropriate provision to grant relief from the payment of the prescribed charges in circumstances where payment of the charges would cause undue financial hardship; and
  - 62.4 the prescribed charges do not limit or are justified limits on the rights and freedoms in the New Zealand Bill of Rights Act 1990.
- 66 I am satisfied that these prerequisites are met. I have also consulted with the Minister of Health, which I am required to do in relation to cost recovery regulations.
- 67 The proposed fee for critical workers and their partners/dependent children relates to managed isolation and quarantine costs and is less than the actual costs of MIQF because it does not include costs of MBIE's partner MIQ agencies or other additional reasonable costs. The Act allows for charges to be set at a level that take into account the costs or potential costs arising indirectly in relation to a class of persons, even if a particular individual in the class does not incur those costs directly.
- 68 Employers and supporting agencies receive the economic benefit of the critical worker coming to New Zealand. I consider that it is not appropriate that they be able to seek waivers on undue financial hardship grounds. Deferred payments and payment by instalment in the case of financial hardship will continue to be available.

- 69 Under the New Zealand Bill of Rights Act 1990, New Zealand citizens have a right to enter New Zealand. Permanent residents also have a right to enter New Zealand under the Immigration Act 2009. The proposed amendments do not engage the right to enter New Zealand because critical workers do not have a protected right to enter New Zealand in the same way that citizens and permanent residents do.
- 70 I have also considered whether the proposed fees for critical workers could be discriminatory. Everyone has the right to be free from discrimination on prohibited grounds under the New Zealand Bill of Rights Act 1990. Prohibited grounds of discrimination include ethnic or national origins, which includes nationality or citizenship.
- 71 The differential treatment of critical workers is not based on national origin, but instead is based on the legal basis in which the person arrives in New Zealand. Preferential treatment under the Regulations is justified and given to those who have a right to enter New Zealand, as opposed to critical workers who are only permitted to enter New Zealand based on the economic and social value their entry provides to New Zealand.

### **Regulations Review Committee**

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

### **Certification by Parliamentary Counsel**

- 73 The the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2020 are certified by the Parliamentary Counsel Office as being in order for submission to Cabinet, subject to the following:

70.1 the statutory prerequisites relating to regulations in the COVID-19 Public Health Response Amendment Act 2020 are met; and

70.2 the granting of a waiver of the 28-day rule to allow the regulations to come into force on 1 January 2021.

### **Impact Analysis**

- 74 To come

### **Publicity**

- 75 A communications plan will be developed by officials in consultation with the Minister's office to ensure widespread awareness of amendments to the fees regime. This will also position our agencies and diplomatic posts to respond to queries from critical workers offshore.
- 76 I intend to make a public announcement when the Regulations are submitted to Executive Council after Cabinet on Monday 14 December 2020.

- 77 The horticulture and wine industries, who will be most impacted by the proposed changes to the fees regime for critical workers, were advised of the broad direction of changes to the fees settings for RSE workers through the government's announcement on 27 November 2020.

### Proactive release

- 78 This paper will be proactively released following enactment of the changes to the Regulations, with redactions made as appropriate.

### Consultation

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

### Recommendations

I recommend that Cabinet:

- 1 **Note** that on 16 November 2020, in making decisions about border exceptions for RSE workers, Cabinet agreed [CAB-20-MIN-0473]:
  - 1.1 to recover a higher level of cost for MIQ services from all employers of critical workers, based on the average cost, currently estimated to be \$4,722 per person, through a contract with the employer or industry group
  - 1.2 that employers of critical workers should pay MIQ fees upfront.
- 2 **Note** that the most efficient way to give effect to the above decision is to amend the Regulations, which do not currently allow a higher fee to be charged, for employers to be liable, or for payments to be required in advance;
- 3 **Agree** to amend the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 to:
  - 3.1 charge a higher fee for critical workers' stays in MIQ;
  - 3.2 make employers or supporting agencies of critical workers liable for the charges, or the individual if there is no employer or supporting agency; and
  - 3.3 allow MBIE to require payment in advance, where appropriate;

- 4 **Agree**, in addition to decisions previously made Cabinet, that:
  - 4.1 the higher fee for critical workers be a flat fee of \$4,800 + GST per person for critical workers and any partners or dependent children (3 years or older)
  - 4.2 dependent children of critical workers under 3 years old are not charged
  - 4.3 employers or supporting agencies of critical workers should not be able to apply for a fees waiver on grounds of undue financial hardship or special circumstances
  - 4.4 the new fee settings for critical workers will not apply to critical health workers or the second tranche of deep sea fishing crew, who will continue to be charged under current fee settings.
- 5 **Note** that the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2020 will give effect to the decisions referred to in paragraphs 1 to 4 above;
- 6 **Authorise** the submission to the Executive Council of the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2020;
- 7 **Note** that a waiver of the 28-day rule is sought:
  - 1.1 so that the Regulations can come into force on 1 January 2021
  - 1.2 on the grounds that this will ensure the new fee settings are in place for RSE workers arriving from mid-January to mid-March.
- 8 **Agree** to waive the 28-day rule so that the regulations can come into force on 1 January 2021;
- 9 **Note** that section 33A of the COVID-19 Public Health Response Amendment Act 2020 requires that the responsible Minister must consult with the Minister of Health before recommending the making of an Order in Council relating to cost recovery;
- 10 **Note** that section 32C of the COVID-19 Public Health Response Amendment Act 2020 requires that the responsible Minister must be satisfied of the following matters before recommending regulations be made under section 33A:
  - 10.1 the charges concerned relate to MIQ costs (including direct and indirect costs);
  - 10.2 the prescribed charges recover from any class of persons no more than an estimate of the actual and reasonable MIQ costs incurred in relation to that class (including both direct and indirect costs);



**IN CONFIDENCE**

- 10.3 there is appropriate provision to grant relief from the payment of the prescribed charges in circumstances where payment of the charges would cause undue financial hardship; and
  - 10.4 the prescribed charges do not limit or are justified limits on the rights and freedoms in the New Zealand Bill of Rights Act 1990.
- 11 **Note** the advice of the Minister for COVID-19 Response that these requirements have been met.

Authorised for lodgement

Hon Chris Hipkins

Minister for COVID-19 Response