



BRIEFING

MIQ fees - extending the length of time people must be in the country to not be liable to pay fees

Date:	23 February 2021	Priority:	High
Security classification:		Tracking number:	2021-2023

Action sought		
	Action sought	Deadline
Hon Chris Hipkins Minister for COVID-19 Response	Agree to extend the MIQ fee liability period from 90 days to 180 days	2 March 2021
Hon David Parker Attorney General		

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Kara Isaac	General Manager, MIQ Policy	Privacy of natural persons	✓
Privacy of natural persons	Policy Manager, System and Strategy		
	Senior Policy Advisor, System and Strategy		

The following departments/agencies have been consulted
Crown Law Office and the Ministry of Justice.

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments



BRIEFING

MIQ fees - extending the length of time people must be in the country to not be liable to pay fees

Date:	23 February 2021	Priority:	High
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Purpose

To provide you with advice on extending the minimum period that returning New Zealand citizens and permanent residents must remain in the country to not be liable to pay MIQ fees from 90 days to 180 days.

Executive Summary

1. The COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 came into effect on 11 August 2020. The Regulations set the fees for people entering MIQ facilities. The primary objective of the MIQ fees system is to recover some of the costs of MIQ services to make the provision of MIQ more financially sustainable. The secondary objective is lowering demand for MIQ services related to short-term travel.
2. New Zealand citizens and permanent residents are currently liable to pay MIQ fees if they are in the country for less than 90 days (starting from \$2,696 + GST for the first or only person in a room). On 15 February 2021, Cabinet made an in-principle agreement to extend this period from 90 days to 180 days and delegated authority to you to final decisions on this following further policy and legal advice [CAB-MIN-21-0016 refers].
3. MIQ has been in place since April 2020 and as more time has passed the international environment suggests MIQ will be needed for the foreseeable future. With the whole-of-life cost of MIQ increasing, there is an argument that more people entering New Zealand should contribute to the costs of their MIQ stay. If the MIQ liability period is extended from 90 days to 180 days, we estimate an additional \$0.5 million per month in revenue will be generated from the MIQ fees regime.
4. The 90 day period for people who will be liable for the MIQ fee was set as a measure for 'temporary travel' and drew a 'line in the sand' for 'temporary travellers' to be liable for the MIQ fee. It was intended to support the secondary objective to lower the demand of MIQ provision linked with short-term travel.

5. Legal professional privilege

6.

9. If you agree to extend the liability to 180 days, we recommend that the change comes into effect on 1 June 2021 to allow time to publically signal the change and update processes and resources to ensure the change can be properly implemented.
10. MBIE is currently undertaking a wider review of the MIQ fees system. It is considering who should be liable to pay fees and whether the fee levels are appropriate. We will provide recommendations to the Minister for the COVID-19 Response in due course. If you do not agree to extend the timeframe to 180 days, on the basis that wider exemption settings will be considered as part of the review, then we will take Cabinet's intent to increase the timeframe into account as we progress the MIQ Fees Review.

Recommended action

The Ministry of Business, Innovation and Employment recommends you:

**Minister for
COVID-19
Response**

**Attorney
General**

- a **Note** that the primary objective of the Managed Isolation and Quarantine (MIQ) fees system is to recover some of the costs of MIQ services and the secondary objective of lowering demand for MIQ services related to short-term travel;
- b **Note** that the primary objective of the Managed Isolation and Quarantine (MIQ) fees system is to recover some of the costs of MIQ services and the secondary objective of lowering demand for MIQ services related to short-term travel;
- c **Note** that on 15 February 2021, Cabinet made an in-principle agreement to extend the period for New Zealand citizens from 90 days to 180 days for returning New Zealanders and permanent residents to remain in the country to not be liable for the MIQ charge [CAB-MIN-21-0016 refers];
- d **Note** that Cabinet authorised you to make final decisions on this following further policy and legal advice [CAB-MIN-21-0016 refers];
- e

Legal professional privilege

f **Note** that MBIE is currently undertaking a wider review of the MIQ fees system to look at how well the system is functioning, including considering BORA implications of the whole regime and will report back to the Minister for COVID-19 Response in April 2021;

g **Agree** to:

a. progress with the proposed changes to extend the MIQ fee liability period from 90 days to 180 days in the COVID-19 Public Health Response (Managed Isolation & Quarantine Charges) Regulations 2020; and

Agree
 disagree

Agree /
 disagree

b. that this change come into effect on 1 June 2021 to allow time to publically signal the change in March (and prepare those returnees who will be affected to receive fair notice) and update MIQ processes and resources to ensure the change can be properly implemented;

Agree
 disagree

Agree /
 disagree

OR

h **Agree** that officials consider any changes to the period that New Zealand citizens and permanent residents are liable to pay MIQ fees as part of its wider MIQ Fees review

Agree
 disagree

Agree /
 disagree



Kara Isaac
General Manager
MIQ Policy, MBIE

23.2.21
..... / /



Hon Chris Hipkins
Minister for COVID-19 Response

9 / 3 / 21
..... / /



Hon David Parker
Attorney General

9 / 3 / 21
..... / /

Background

11. The COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 set the fees for people entering MIQ facilities. The fees came into effect on 11 August 2020, and there are different fees depending on immigration status and length of time that a person is in the country.
12. The primary objective of the MIQ fees system is to recover some of the costs of MIQ services to make the provision of MIQ services more financially sustainable. The MIQ fees system has a secondary objective of lowering demand for MIQ services related to short-term travel [LEG-20-MIN-0141 refers].
13. The fee settings were designed to balance the rights of New Zealand citizens and permanent residents to enter New Zealand with the need to have an economically sustainable MIQ system. The New Zealand Bill of Rights Act 1990 (BORA) is a key consideration for Ministers when establishing and reviewing the MIQ fees settings – the implications of this are outlined in this report.
14. Due to the changing nature of the COVID-19 pandemic, Cabinet intended that all aspects of the MIQ system, including the fees system, will be kept under regular review to ensure that any restriction on BORA rights posed by the fees is proportionate and necessary, and that the Regulations remain appropriate in light of changes to circumstances domestically or globally [LEG-20-MIN-0141 refers].

Cabinet decisions to extend the MIQ liability period from 90 days to 180 days

15. New Zealand citizens and permanent residents are currently liable to pay MIQ fees if they are in the country for less than 90 days (starting from \$2,696 + GST for the first or only person in a room). They are exempt from paying MIQ fees if they remain in New Zealand for a minimum of 90 days from the date of their arrival, if they have left New Zealand before 11 August 2020.
16. On 15 February 2021, Cabinet made an in-principle agreement to extend this period from 90 days to 180 days [CAB-MIN-21-0016 refers].
17. Cabinet also authorised the Attorney General and the Minister for COVID-19 Response to make final decisions on this following further policy and legal advice [CAB-MIN-21-0016 refers]. Below is our advice on the potential implications relating to the extension of the time period to 180 days.

Advice on extending the MIQ fees liability period to 180 days

18. MIQ has been in place for some time now and as more time has passed the international environment suggests MIQ will be needed for the foreseeable future. With the whole-of-life cost of providing MIQ facilities increasing, there is an argument to be made that more people entering New Zealand should contribute to the costs of their MIQ stay.
19. The proposed change will make more people liable to pay the MIQ fee, thereby increasing the contribution towards reducing MIQ costs to the Government and the sustainability of the MIQ system. It is difficult at this time to quantify the impact that this proposal will have on generating revenue. We intend to consider this as part of the Supplementary Analysis Report that will be provided with the Cabinet Legislation Committee (LEG) paper on the changes to the Regulations. However, below are indicative financial estimates.
20. The increased timeframe may also provide a disincentive for people planning to return to for periods of just over 90 days, in order to get around being liable for MIQ fees. We recognise that there are a range of reasons why people depart New Zealand shortly after 90 days, and we do not hold clear data on why this occurs.

21. Due to the time constraints, we have not undertaken an assessment of any Treaty of Waitangi implications from the proposal to extend the timeframe to 180 days. If you agree to the proposed change, we will provide comment in the Supplementary Analysis Report process and reflect any identified impacts in the LEG paper.

Initial rationale of the '90 day period' could be considered no longer relevant

22. The nature of travel has continually shifted since the beginning of the global pandemic and as countries around the world implement measures against the spread of COVID-19, including restricting entry at the border, travelling has become, for many people, a significant commitment. We consider that the MIQ fees regime should reflect current realities and doubling the period of time to be liable to pay an MIQ fee reflects this changing nature of international travel.
23. When the fees regulations came into effect in August 2020, it was intended that those people who were entering New Zealand for short-term travel will be liable for MIQ fee charges (such as, travelling for holiday or business purposes).
24. The period of '90 days' was considered a measure of 'temporary stay' for people returning to New Zealand [LEG-20-MIN-0127 refers]. This 90 day period corresponds with what is considered a 'short-term' stay or visit in the immigration system and aligns with Statistic New Zealand's definition of short term arrival and most visa waiver visitor durations. This period is also likely to be a longer length of time than most holidays, meaning that people staying longer than 90 days in New Zealand are unlikely to solely be here for recreational travel reasons [Briefing 2021-0301 refers].

Potential impacts of these changes on revenue generated through fees

25. Current estimates indicate that the potential revenue generated from the change is minimal compared to the total cost associated with the number of affected people staying in an MIQ. The Supplementary Analysis Report will include detailed potential financial impacts to the MIQ fees system from the change.
26. Since the introduction of the MIQ fees system (as at 22 January 2021), 51,569¹ New Zealand citizens and permanent residents, and Australians normally resident in New Zealand have arrived in the country. Of these, 1458 (3%) left after more than 90 days but less than 180 days (maximum of 164 days, according to our current data).
27. Based on these figures, if the MIQ liability period is extended from 90 days to 180 days, and before exemptions and waivers are considered, we estimate an additional \$0.5 million per month in revenue from the MIQ fees regime. This would increase total revenue to an estimated \$15.2 million per month (excluding GST). This additional revenue (even though comparably small) further supports a quality MIQ system by further enabling the government to recover some of the costs of MIQ services to make the provision of MIQ services more sustainable.²

BORA considerations under current settings


28. Before regulations can be made prescribing MIQ charges, the responsible Minister must be satisfied that the MIQ fees settings meets a set of statutory prerequisites under section 32C of the Act (see paragraph 43 below).
29. In general, there is an obligation to ensure that policy is consistent with, and does not infringe upon, rights or freedoms guaranteed under BORA. However, a reasonable limit on a BORA

² We note that the Cabinet paper provided an estimate of approximately \$9 million to \$12 million in additional revenue. That was an annual estimate. Since Cabinet considered proposals we have further refined our estimates as part of our impact analysis for the Supplementary Analysis Report.

right or freedom may be warranted if the objective of the proposed measure is sufficiently important in a free and democratic society. If a sufficiently important objective is established, the measures adopted to achieve the objective must be rationally connected to the objective, impair the relevant right or freedom no more than is reasonably necessary, and the effects of the limitations should be proportionate to the objective.

Crown Law Office comment on the proposed changes and BORA considerations

Legal professional privilege



Legal professional privilege

Is the proposed change connected to the objective, proportionate, and as little an impairment on the right as possible?

Legal professional privilege

Implementation

48. If Ministers agree to extend the fees liability period, we recommend that the change comes into effect on 1 June 2021 to allow time to:
- Publically signal the change.
 - MIAS is fully booked until the end of May. Returnees who have already booked flights and hold MIQ vouchers for April and May and were intending to return for between 91-179 days would be liable for MIQ fees without fair notice.
 - The change could be announced early/mid-March 2021 as part of the regulations that will make all temporary entry class visa holders' liable for the higher MIQ fee [CAB-MIN-21-0016 refers]. As such, the public would have around 10 weeks to adjust their travel plans before the change comes into effect.
 - Update processes and resources to ensure the change can be properly implemented. For example, officials will need to update processes and put in place new information sharing agreements.
49. We will work with the Minister for the COVID-19 Response's office on a communications plan to ensure widespread awareness of the proposed changes to the fees regime.

Operational challenges

50. Increasing the timeframe to 180 days will not address existing challenges with identifying which travellers left the country before their intended time (making them liable to pay the MIQ fee). This is a trust model that may not always reflect people's circumstances and it is not currently possible to identify whether returnees' circumstances have changed.
51. Officials are attempting to address this issue, and other data challenges, through information sharing agreements between MIQ, Immigration New Zealand, and Customs. Sharing necessary information between these systems will improve the system's ability to determine who is (and who is not) liable for the MIQ fees.
52. We expect that the proposed changes will also present an administrative impact on the fees waiver system. More people will be liable to pay the MIQ fee and that will mean an increase in applications for waivers. This change was not accounted for in the recent funding sought for the MIQ Operating Model [CAB-20-MIN-0511].

Changing the fees liability period could instead be considered in the wider MIQ fees review

53. MBIE is currently undertaking a wider review of the MIQ fees system, and changes to the period that New Zealand citizens and permanent residents are liable to pay MIQ fees could be considered during this process. The purpose of the review is to look at how it aligns with the Government's objectives and whether the system is functioning well. The review will consider who should be liable to pay fees and whether the fee levels are appropriate. MBIE will provide the Minister for the COVID-19 Response with recommendations to take to Cabinet in May 2021.
54. As part of this work, we will be examining the current regime (and any potential recommended changes) with a BORA lens to reaffirm that the MIQ fees regime continues to meet its statutory obligations to be justified and proportional under BORA. We will consider how the suite of features that the fees regime has (such as exemptions, delayed payments, and now the proposed 180 days threshold) help to achieve the objectives of the regime without unduly limiting rights.
55. We will also look at the exemption and liability provisions to understand whether these provisions are still appropriate under the changing international landscape of COVID-19 and in the context of growing costs of MIQ to the Government. As part of that review, we intend to look at the length of the exception period, including whether any exemption on the grounds of length of stay is still relevant. We will also be examining each exception against BORA.

Next steps

56. If you agree to extend the timeframe from 90 to 180 days, then we will ensure that any recommendations coming out of the MIQ fees review align with Cabinet's decision to increase the timeframe to 180 days. We will also ensure the proposed changes are progressed alongside the regulations to make temporary entry class visa holders liable for the higher MIQ fee, which is due to LEG early/mid-March 2021 [CAB-MIN-21-0016 refers].
57. If you do not agree to extend the timeframe from 90 to 180 days, on the basis that wider exemption settings will be considered as part of the Review, then we will take Cabinet's intent to increase the timeframe into account as we progress the MIQ Fees Review.
58. We will provide talking points to the Minister for COVID-19 to report back to Cabinet outlining final decisions on this issue in the coming weeks.