



BRIEFING

MIQ fees for returnees and evacuees from Afghanistan

Date:	4 October 2021	Priority:	High
Security classification:		Tracking number:	2122-1104

Action sought		
	Action sought	Deadline
Hon Chris Hipkins Minister for COVID-19 Response	<p>Agree in principle to waive MIQ fees for individuals supported or enabled to evacuate as part of the Afghanistan resettlement response.</p> <p>Agree to a Ministerial power to waive fees for these individuals.</p> <p>Agree to take proposals for the Ministerial power to Cabinet through the Cabinet paper being led by the Minister for Immigration and Minister of Foreign Affairs on the Afghanistan resettlement response.</p>	6 October 2021

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

The following departments/agencies have been consulted
Immigration New Zealand, Ministry of Foreign Affairs and Trade

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 Withdrawn |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 fees for returnees and evacuees from Afghanistan

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Purpose

To seek your direction with regard to options for charging or waiving fees for individuals supported or enabled to evacuate from Afghanistan as part of the Afghanistan resettlement response.

Executive summary

On 16 August 2021, Cabinet agreed to resettle Afghan nationals who supported the New Zealand presence in Afghanistan where being identified in relation to that work means there is a threat to their safety while they remain in Afghanistan (the Afghanistan resettlement response) [CAB-21-MIN-0323 refers]. Approximately 400 people have arrived through this response and have completed Managed Isolation and Quarantine (MIQ) and up to a further 1,250 people are eligible to enter New Zealand and may arrive over the coming months.

It is likely that most Afghanistan evacuees and expected arrivals as part of this response will be liable for MIQ fees under the COVID-19 Public Response (Managed Isolation and Quarantine Charges) Regulations 2020 (the Regulations) on the basis of their visa status (i.e. they will have been issued with a temporary critical purpose visa).

Many evacuees are likely to be vulnerable and with few financial resources, and may not have chosen to come to New Zealand at this time. Unplanned expenses in a crisis (such as MIQ fees) are likely to cause distress to individuals who have already experienced significant trauma and stress. We consider it is appropriate not to charge this group MIQ fees to avoid causing further distress to individuals who have already experienced significant trauma and stress. You may wish to consider not charging fees for this group as a class.

Under the current settings of the Regulations, there is no ability to exempt or waive fees for Afghanistan evacuees or expected arrivals as a class. If you wish not to charge MIQ fees to this group as a class, legislative change to the Regulations is required.

If you wish not to charge MIQ fees for this group, inclusive of everyone that has arrived since 16 August, we recommend that the Regulations are amended to introduce a Ministerial power to waive the fees for this specific group as a class. A fee waiver can apply to people who are currently liable i.e. for people that have already entered MIQ, as well as those that will be liable in the future, so avoiding retrospective legislation. Creating a fee waiver for this class, would mean that all individuals supported or enabled to evacuate Afghanistan and departed after 16 August 2021 would not need to pay MIQ fees, and invoices would not need to be issued.

If you agree to this proposal, we recommend it be progressed through the current Afghanistan resettlement response Cabinet paper going to the Economic Development Committee on 20 October (led by the Minister for Immigration and the Minister of Foreign Affairs).

Seeking decisions through the Afghanistan resettlement response paper will allow this proposal to align with other unrelated minor and technical fees amendments currently being drafted [CBC-21-MIN-0104 refers], and allow the fee waiver to be in place by the end of the year.

If you do not agree to this recommendation, the people arriving as part of the Afghanistan resettlement response can still apply for a waiver by the Chief Executive of the Ministry of

Business, Innovation and Employment (MBIE). However, we consider that this would potentially cause unnecessary distress for impacted people, as invoices will need to be issued, as well as be onerous and resource-intensive for individuals and for officials to issue waivers on an individual, case-by-case basis.

The Chief Executive must issue an invoice on or after the date that a liable person leaves MIQ. To date, evacuees that have departed MIQ have not received an invoice. Legal professional privilege

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1 Legal professional privilege

Recommended action

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

- a **Note** that of the approximately 400 New Zealand citizens, permanent residents and Afghan nationals that have been evacuated from Afghanistan since 16 August 2021, most are potentially liable for Managed Isolation and Quarantine (MIQ) fees.

Noted

- b **Note** that it is likely that of the further 1,250 individuals eligible to enter New Zealand from Afghanistan, most will potentially be liable for fees.

Noted

- c **Agree** not to charge MIQ fees for any individual supported or enabled to evacuate from Afghanistan to New Zealand, who departed Afghanistan after 16 August 2021 as part of the Afghanistan resettlement response.

Agree / Disagree

- d **Agree** to either:

- a. Option 1: rely on the existing Chief Executive power to waive MIQ fees on a case-by-case basis for people who are part of the Afghanistan resettlement response (status quo) (*not recommended*)

Agree / Disagree

OR

- b. Option 2: Amend the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 (the Regulations) to create a new Ministerial class waiver power for people who are part of the Afghanistan resettlement response (*recommended*).

Agree / Disagree

If you agree to Option 1

- e **Note** that each affected person will be required to apply to the Chief Executive of MBIE for a waiver on the grounds of either special circumstances or undue financial hardship.

Noted

If you agree to Option 2

- f **Agree** that the new Ministerial class waiver power will cover any individual supported or enabled to evacuate from Afghanistan to New Zealand as part of the Afghanistan resettlement response, who departed Afghanistan after 16 August 2021 (in accordance with MFAT and INZ's advice).

Agree / Disagree

- g **Note** that for the amendments to the Regulations to come into effect before the end of the year, you will need to seek a waiver of the 28-day rule.

Noted

- h **Note** that you will be required to notify who will be included in the class in a Notice issued in the *Gazette* once the amendments to the Regulations come into force. We will provide further advice on this in due course.

Noted

i **Note** that if you agree that the Ministerial class waiver covers the group set out in recommendation (f) then, we estimate that the Government will not recover approximately \$3.84 million in MIQ fees.

Noted

j **Agree** to seek policy decisions either through:

a. the Afghanistan resettlement response Cabinet paper led by the Minister for Immigration and Minister of Foreign Affairs (*recommended*); AND

Agree / Disagree

i. **Agree** to the draft Cabinet paper content for the Afghanistan resettlement response Cabinet paper led by the Minister for Immigration and Minister of Foreign Affairs (Annex One);

Agree / Disagree

OR

b. a separate stand-alone Cabinet paper (*not recommended; timing would be confirmed with your office*)

Agree / Disagree

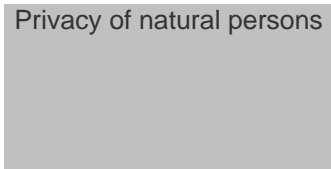
k **Note** that MIQ has incurred additional costs for services to support these returnees, such as translation and interpretation services, which will be met from MIQ baselines.

Noted

l **Agree** that this briefing is proactively released with appropriate withholdings under the Official Information Act 1982.

Agree / Disagree

Privacy of natural persons



Acting General Manager, MIQ Policy
Managed Isolation and Quarantine, MBIE

04 / 10 / 2021

Hon Chris Hipkins
Minister for COVID-19 Response

.11. / .10. / .2021

Background

1. Following the rapid change in Afghanistan's political stability, the New Zealand Government evacuated approximately 400 New Zealand citizens, permanent residents, and Afghan nationals with links to New Zealand that held critical purpose visas and brought them to New Zealand in late August 2021. This first phase of the evacuation concluded on 30 August.
2. On 16 August, Cabinet agreed to resettle Afghan nationals who supported the New Zealand presence in Afghanistan where being identified in relation to that work means there is a threat to their safety while they remain in Afghanistan (the Afghanistan resettlement response) [CAB-21-MIN-0323 refers].
3. On 16 September, the Ministers granted with the Power to Act² by Cabinet further agreed to treat New Zealand citizens, residents and certain visa holders equally when it comes to providing them with humanitarian support and consular assistance to travel to New Zealand.³ This includes:
 - a. New Zealand citizens, permanent residents, and their immediate family members;
 - b. Afghan nationals with New Zealand visas granted under section 61 of the Immigration Act 2009 due to their association with the New Zealand Defence Force or other New Zealand Government agencies in Afghanistan (as per Cabinet-agreed criteria on 16 August); and
 - c. Afghan nationals with New Zealand visas issued by the Associate Minister of Immigration under section 61 of the Immigration Act 2009 between 17 and 28 August.
4. It is likely that most Afghanistan evacuees and expected arrivals will be liable for MIQ fees under the COVID-19 Public Response (Managed Isolation and Quarantine Charges) Regulations 2020 (the Regulations) on the basis of their visa status (i.e. they will have been issued with a temporary critical purpose visa).
5. At this stage, the Afghanistan resettlement response is ongoing and there is no defined end date.

MIQ response to and current settings for Afghanistan evacuees

6. We recommend that any individual supported or enabled to evacuate from Afghanistan to New Zealand, who departed Afghanistan after 16 August 2021 as part of the Afghanistan resettlement response is subject to an MIQ fee waiver, so they will not be required to pay MIQ fees and will not be issued an invoice.
7. Many evacuees are likely to be vulnerable and with few financial resources, and may not have chosen to come to New Zealand at this time. Unplanned expenses in a crisis (such as an MIQ fee) are likely to cause distress to individuals who have already experienced significant trauma and stress.
8. Of the approximately 400 evacuees that have entered New Zealand as at 30 September:
 - a. 112 are New Zealand citizens, permanent residents or residents; and
 - b. 294 are temporary visa holders including:

² The Prime Minister, Minister of Finance, Minister of Foreign Affairs, Minister of Immigration and the Minister of Defence

³ MFAT briefing *Afghanistan Response: New Zealand support for New Zealand citizens, permanent residents and Afghan visa holders* (9 September) refers

- i. 42 visas granted under s 61 of the Immigration Act as per Cabinet's 16 August criteria or at the discretion of the Associate Minister of Immigration;
 - ii. 217 other critical purpose visas (the majority of which comprises family members of NZ citizens/Permanent Residents); and
 - iii. 35 other temporary visas.
9. There are currently approximately another 1,250 individuals that are eligible to come to New Zealand that were not evacuated in late August 2021. On 27 September 2021, we provided you with advice on options to accommodate these additional returnees over the coming months [2122-1129 refers]. This group includes:
 - a. Approximately 200 New Zealand citizens, permanent residents and immediate family members; and
 - b. Approximately 1,050 Afghan nationals who have either been granted or are likely to be granted visas under s 61 of the Immigration Act as per Cabinet-agreed criteria or by the Associate Minister of Immigration.
10. We estimate that over 90 percent of the arrivals who are part of the Afghanistan resettlement response would be liable for fees under the Regulations.⁴ As set out above, most are temporary visa holders and would therefore be liable for the higher MIQ fee of \$5,520 (including GST) for the first person in the room. We understand that none of this group so far are entering New Zealand as claimants, refugees or protected persons who would be exempt from fees under the Regulations.
11. As at 30 September, almost all of the approximately 400 evacuees have departed MIQ. Under the Regulations, the Chief Executive of MBIE must issue an invoice on or after the date that a liable person leaves MIQ. Legal professional privilege
[REDACTED]
[REDACTED]
[REDACTED]⁵

Additional services costs

12. The evacuees required additional services while in MIQ, such as translation and interpretation services and culturally specific wellbeing support. Onsite interpreter costs for the first 400 evacuees were around \$81,500.
13. We have been able to absorb the wraparound support for the first 400 evacuees from baselines and will continue to do so. However, depending on the scale and duration of the Afghanistan resettlement response, these costs may become significant over time. We are working to develop a clearer picture of what the costs would be.
14. In general, for other groups (e.g. sports teams, mariners), we seek to recover costs incurred over and above standard MIQ 'offer'. However, we do not seek to recover costs for wraparound support for refugees. We have applied this approach to the evacuees from the Afghanistan resettlement response and are not seeking to recover additional costs from the affected persons.

⁴ An initial manual review indicates about 96 percent of the 400 initial Afghanistan evacuees would be liable for fees, not taking account of group dynamics e.g. if one person is exempt.

⁵ Legal professional privilege

Options for fee waivers

15. Under the current settings of the Regulations, there is no ability to exempt or waive fees for Afghanistan evacuees or expected arrivals as a class; therefore, if you wish not to charge MIQ fees to this group, legislative change to the Regulations is required.
16. If you wish to not charge MIQ fees for this group, inclusive of everyone that has arrived since 16 August, a fee waiver power would be needed. A fee waiver can apply to people who are currently liable i.e. for people that have already entered MIQ, as well as those that will be liable in the future, so avoiding retrospective legislation.
17. If you agree that arrivals who are part of the Afghanistan resettlement response should be subject to an MIQ fee waiver, there are two options:
 - a. Option 1: rely on the existing CE power to waive fees on a case-by-case basis (status quo) (not recommended); or
 - b. Option 2: amend the Regulations to create a new class waiver power for Afghanistan evacuees (recommended)

Option 1: rely on the existing Chief Executive power to waive fees on a case-by-case basis (status quo) (not recommended)

18. The only option available under the current settings is for individuals to apply to the Chief Executive (CE) of MBIE for a waiver on the grounds of special circumstances or undue financial hardship (the CE waiver). The CE would consider each application on a case-by-case basis. Each arrival as part of the Afghanistan resettlement response would be required to apply to the CE of MBIE for a waiver on the grounds of special circumstances or undue financial hardship.
19. We do not recommend this option, because of the impact that the application process would have on the affected people, and the operational cost of each application being made and processed. Most evacuees will face language and cultural barriers entering New Zealand, as well as trauma from their experiences. Requiring them to participate in the application process could be onerous and distressing for many. It would also add substantially to the workload of officials issuing waivers on behalf of the CE of MBIE.

Option 2: Amend the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 to create a new class waiver power for Afghanistan evacuees (recommended)

20. We recommend that the COVID-19 Public Response (Managed Isolation Charges) Regulations 2020 (the Regulations) are amended to provide a Ministerial power to waive fees for a class (Ministerial class waiver) that would apply to the arrivals from the Afghanistan resettlement response.
21. This would be the same approach that was taken for returnees on managed returned flights from New South Wales and other Australians following the suspension of the Trans-Tasman Quarantine Free Travel (QFT) arrangement [NSW-006 / 2122-0154 refers].
22. The key benefits of a Ministerial class waiver compared to the CE waiver, would be to provide certainty to the arrivals as part of the Afghanistan resettlement response about their liability for MIQ fees and to reduce the stress and trauma that might be posed by substantial and unexpected invoices for many families. All individuals supported or enabled to evacuate Afghanistan and departed after 16 August 2021 would not need to pay MIQ fees, and invoices would not need to be issued. These benefits will be most effectively realised if the class waiver can be implemented in a way that does not require individuals to apply to be within the class.

23. To date, MBIE has successfully identified arrivals who are part of the Afghanistan resettlement response from the initial evacuation efforts and we are confident that we can continue to identify impacted people if a Ministerial class waiver is to be applied to this group. We will work with the Ministry of Foreign Affairs and Trade (MFAT) and Immigration New Zealand (INZ) to ensure we can continue to identify people coming through these channels.

Defining the fee waiver class

24. If Cabinet approves the proposed Ministerial power to waive, we will provide you with advice on the definition of the class, to inform your exercise of that power. As outlined in paragraph 3 above, the following groups of people are included in the Afghanistan resettlement response:
- a. New Zealand citizens, permanent residents, or their immediate family members; or
 - b. Afghan nationals with New Zealand visas granted under section 61 of the Immigration Act 2009, either due to their association with the New Zealand Defence Force or other New Zealand Government agencies in Afghanistan; issued by the Associate Minister of Immigration since 17 August 2021.
25. Defining the class this way may not include individuals from Afghanistan on other types of temporary visas. Some of these may be covered as immediate family members of New Zealand citizens or permanent residents. Others may not be eligible for the Afghanistan resettlement response, or have made their way to New Zealand outside of the Afghanistan resettlement response. In those cases, the CE waiver process would still be available to them. We will provide you with further advice on this as part of seeking your decision on the definition of the class, in due course.
26. Additionally, we understand that MFAT and INZ are advising Ministers of Immigration and Foreign Affairs on options for further humanitarian support beyond those eligible under the Afghanistan resettlement response. We will work with MFAT and INZ to further understand any changes and provide you with advice on this as part of seeking your decision on the definition of the class.

Financial impact of options

27. The total impact of waiving fees for the affected group, as currently defined, would be approximately \$3.84 million. This captures:
- a. Approximately \$0.9 million in total for the initial 400 evacuees (based on 112 New Zealand citizens or residents and 294 temporary visa holders, and assuming that no fee waivers are sought), and
 - b. \$2.9 million for the 1,250 evacuees that may enter MIQ in the coming months (based on approximately 200 New Zealand citizens and residents and immediate family members, and 1,050 temporary visa holders).
28. Cost estimates assumed the following:
- a. Everyone is liable for MIQ fees;
 - b. No waiver applications have been made;
 - c. If a New Zealand citizen or permanent resident is within a group, all others in the room are applied the relevant New Zealand returnee rates; and
 - d. Groups larger than four people only pay first person rate once although they are likely to need more than one room.

Implications for current proposed amendments to the Regulations

29. Drafting is underway for unrelated minor and technical amendments to the Regulations, agreed to on 22 September 2021 [2122-0285 and CBC-21-MIN-0104 refer]. These amendments include introducing a new Ministerial power to exempt classes of people from MIQ fees where people enter New Zealand to assist with a national emergency or to respond to a nationally significant event, following the recent fees regime review. These amendments are expected to be in place by the end of the year.
30. If Cabinet agrees to the proposed minor and technical amendments, you may wish to consider using an exemption power in the future for the Afghanistan resettlement response. However, a waiver power is needed in the meantime for those that have entered MIQ.

Next steps

31. If you agree to Option 1, then no changes will be required to the Regulations. If you agree to Option 2 (recommended), then Cabinet will need to agree to change the Regulations to include a Ministerial power to waive fees for Afghanistan arrivals as part of the Afghanistan resettlement response, and authorise you to issue drafting instructions to the Parliamentary Counsel Office (PCO).
32. MFAT and INZ are currently developing proposals for the Afghanistan resettlement response for the Economic Development Committee (DEV) on 20 October. We are providing comment on the impact of proposals on MIQ, including fees liability.
33. If you agree to Option 2, then we recommend that the proposed Ministerial power to waive fees is progressed through the Cabinet paper from MFAT and INZ. We have provided draft commentary for this Cabinet paper which includes content seeking agreement to the proposed Ministerial power to waive fees (see Annex One) subject to your decisions on the power.
34. Using this process will allow us to align with the progression of the proposed minor and technical amendments to the Regulations as a result of the recent fees regime review and which include the Ministerial exemption power [CBC-21-MIN-0104 refers, see also paragraphs 29-30 above]. At this stage, it is expected that the proposed amendments will be considered by the Cabinet Legislation Committee (LEG) in November 2021. If Cabinet agrees to proposals for the Ministerial class waiver power relating to the arrivals as part of the Afghanistan resettlement response, then this change could be progressed and take effect at the same time.
35. Alternatively, you may wish to progress the proposed Ministerial class waiver power on a different track and through a separate Cabinet paper (not recommended). However, whether the proposals are progressed and implemented at the same time as the minor and technical changes will depend on Cabinet timing constraints and priorities. This would mean that changes may not get to LEG at the same time as the proposed fees amendments and may not come into force by the end of the year. Officials will discuss timing with your office if you wish to take this route.
36. To ensure that the changes come into effect as soon as practicable, we recommend that you seek an exemption to the 28-day rule for Regulations at LEG. This will provide certainty for the affected people.
37. Once the Ministerial class waiver comes into force, you will be required to issue a Notice in the *Gazette* outlining the conditions of the class. We will provide you with advice as part of seeking your decision on the definition of the class, in due course.

Annex 1: draft Cabinet paper content

38. Based on initial information gathered from the first group that have arrived, it is likely that the majority of Afghanistan evacuees, including New Zealand citizens and permanent residents will be liable for Managed Isolation and Quarantine fees under the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 (the MIQ Fees Regulations). MBIE officials understand that the majority of Afghan nationals are on temporary entry class visas, which means they would be liable for the temporary visa fee of up to \$5,520 including GST.
39. Many evacuees are likely to be vulnerable and with few financial resources, and may not have chosen to come to New Zealand at this time. Unplanned expenses in a crisis, such as MIQ fees, are likely to cause distress to individuals who have already experienced significant trauma and stress.
40. For this reason, I consider that MIQ fees should be waived for this group. I consider that this proposal aligns with the Afghanistan resettlement response to Afghan nationals.
41. The MIQ Fees Regulations do not currently provide a power to waive fees for this group, therefore I propose to amend the MIQ Fees Regulations to create a Ministerial power to waive fees for classes of people included in the Afghanistan resettlement response.
42. Currently, the Afghanistan resettlement response includes:
 - a. New Zealand citizens, permanent residents, or their immediate family members; or
 - b. Afghan nationals with New Zealand visas granted under section 61 of the Immigration Act 2009, either due to their association with the New Zealand Defence Force or other New Zealand Government agencies in Afghanistan; issued by the Associate Minister of Immigration since 17 August 2021.
43. I acknowledge that whoever is included in the Afghanistan resettlement response may change depending on Cabinet decisions. This could have an impact on who is included in the fee waiver class. If Cabinet agrees to the proposed Ministerial fee waiver power for classes of people included in the Afghanistan resettlement response, MBIE officials will work with INZ and MFAT officials and will provide me with further advice on groups who should be subject to the fee waiver based on any further decisions by Cabinet.
44. The estimated financial impact if all fees are waived for the initial 400 evacuees that have gone through MIQ, and the 1,250 expected arrivals that may enter MIQ over the next few months, would be approximately \$3.84m in fees that would not be recovered.
45. I seek Cabinet's agreement to:
 - a. Agree to change the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 to include a Ministerial class waiver power for groups of people included in the Afghanistan resettlement response.
 - b. Authorise the Minister for COVID-19 Response to issue drafting instructions to the Parliamentary Counsel Office to give effect to the proposed change.

Recommendations:

46. **Agree** to change the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 to include a Ministerial class waiver power for groups of people included in the Afghanistan resettlement response.
47. **Invite** the Minister for COVID-19 Response to issue drafting instructions to Parliamentary Counsel Office to give effect to the above recommendation.