



BRIEFING

Improvements to future MIQ room booking and allocation systems

Date:	12 July 2022	Priority:	Medium
Security classification:		Tracking number:	2223-0010

Action sought		
	Action sought	Deadline
Hon Dr Ayesha Verrall Minister for COVID-19 Response	<p>Note that a High Court judgement has declared that the Managed Isolation and Quarantine (MIQ) system did not allow New Zealand citizens facing unreasonable delays returning to New Zealand to be considered and prioritised where necessary.</p> <p>Agree in principle to the following changes to the allocation settings, subject to the re-establishment of managed quarantine requirements for border arrivals, to address the matters raised in the judgement:</p> <ul style="list-style-type: none"> • create a new 'compassionate consideration' offline allocation for New Zealanders; • establish new criteria to prioritise New Zealanders in the Managed Isolation Allocation System (MIAS); • revise the online and offline room allocation ratios, subject to the final Readiness Plan. <p>Note that MBIE has aligned its interpretation of its allocation criteria with the court's findings.</p> <p>Agree to remove Category 4 and Category 5 from the emergency allocation criteria, as they are no longer necessary.</p>	22 July 2022

Contact for telephone discussion (if required)

Name	Position	Telephone	1st contact
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BRIEFING

Title

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Purpose

This briefing provides you with a summary of the findings of the Grounded Kiwis judicial review declaratory judgement (the judgement) and provides advice on how MBIE proposes to address the issues raised in the judgement.

Executive summary

The judgement determined that between 1 September 2021 and 17 December 2021, the MIQ system operated as an unjustified limit on the right of New Zealand citizens to enter their country because and to the extent it did not allow New Zealand citizens facing unreasonable delays to be considered and prioritised where necessary. It also found that the Chief Executive of MBIE had acted unlawfully in some respects.

To address the matters raised in the judgement, MBIE is seeking your agreement in principle to amend the allocation framework to allow greater consideration of the circumstances of New Zealand citizens experiencing unreasonable delays and give greater certainty to those with the greatest need to travel. This includes establishing a new allocation for New Zealanders with compelling reasons for travel that are time sensitive, adding prioritisation capabilities to MIAS, streamlining the emergency allocation application and decision making processes, and aligning the new allocation model with the MIQ Readiness Plan.

The combination of these changes will provide more pathways for New Zealanders to return based on their need and personal circumstances should quarantine and isolation requirements for border arrivals need to be re-established in response to a future public health event.

Recommended action

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

- a **Note** that on 15 June 2022, the High Court released a declaratory judgement and determined that between 1 September 2021 and 17 December 2021 the MIQ system operated as an unjustified limit on the right of New Zealand citizens to enter their country to the extent it did not allow New Zealanders facing unreasonable delays to be prioritised and that the Chief Executive of MBIE had acted unlawfully in some respects in the exercise of her powers under the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020. Noted
- b **Note** that in late 2021, MBIE revised its interpretation of the emergency allocation criteria ('no other option' than to travel to New Zealand and applications to be submitted within 14 days of a person's departure for the application to be considered) and group allocation processes were changed and are already consistent with the court's findings. Noted

c **Agree** in principle to create a new 'compassionate consideration' allocation that provides a pathway for New Zealanders with compelling, time sensitive but non-urgent reasons for travel to be allocated a room using the following categories and criteria set out in this briefing:

- i. Pregnancy, where there are compelling reasons for the pregnant woman and/or her nominated support person to travel to New Zealand;
- ii. Visa expiring;
- iii. Financial hardship;
- iv. Disruption to a planned move to New Zealand from overseas;
- v. Access to medical treatment;
- vi. Preventing an unreasonable delay for a New Zealander seeking to return to New Zealand.

Agree / Disagree

d **Agree** in principle to the criteria to be used in MIAS that prioritises those who have a statutory right to enter New Zealand based on:

- i. The number of unsuccessful attempts to secure a room through MIAS and;
- ii. If individuals have an equal number of unsuccessful attempts, prioritising people who were outside of New Zealand when border closures were announced.

Agree / Disagree

e **Agree** in principle that the proposed criteria in recommendations c and d should be applied to all New Zealanders (defined as New Zealand citizens, permanent residents, and resident visa holders who have already been in New Zealand) with a statutory right to enter New Zealand.

Agree / Disagree

f **Agree** to remove Category 4 (citizens overseas before November 2020 with expiring visas) and Category 5 (hardship for travellers from Australia) from the emergency allocation criteria, as they are no longer necessary.

Agree / Disagree

g **Agree** in principle, and based on a decision by Cabinet to activate the Readiness Plan and re-establish managed quarantine and isolation for border arrivals, that:

I. after 3 to 4 weeks, when up to 1,500 rooms are available, Confidential advice to Government

II. between 5 and 8 weeks, when up to 6,000 rooms are available, Confidential advice to Government

Agree / Disagree

h **Note** the proposed recommended changes are only intended to be implemented if the Readiness Plan (or similar measures) is activated in the event of a border closure and that Ministerial agreement and legislative requirements are in place before they are fully operationalised to ensure that the settings are still fit for purpose.

Noted

- i **Agree** that this briefing be proactively released with appropriate withholdings under the Official Information Act 1982.

Agree / Disagree



Kara Isaac
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Managed Isolation and Quarantine**

12 / 07 / 2022



Hon Dr Ayesha Verrall
Minister for COVID-19 Response

29 / 7 / 22

Background

1. On 27 April 2022, the High Court issued its decision on the judicial review brought by Grounded Kiwis. The judgment set out the Court's findings and invited further submissions on the form of declaratory relief. The judgement on the form of the declaratory relief was issued on 15 June 2022.
2. The claim alleged that the Government acted unlawfully, unreasonably, and in breach of section 18(2) of the New Zealand Bill of Rights Act 1990 in the way that it established and operated the MIQ system – particularly with respect to the booking system model, and the emergency and group allocation system.
3. Amongst other things, concerns were raised that the system did not sufficiently allow individual circumstances to be considered and prioritised where necessary, and the allocation system operated as an unjustified limit on the right of New Zealand citizens to enter their country. The Court found that because, and to the extent that the system did not sufficiently allow individual circumstances to be prioritised where necessary, it operated as an unjustified limit on the right of New Zealand citizens to enter their country.
4. In a briefing to the previous Minister for COVID-19 Response and the Minister of Finance on the MIQ Readiness Plan (BR 2122-4550 refers), MBIE indicated that officials will provide you with advice on a range of policies, operational and technology solutions to improve the allocations process to help to address the findings from the Grounded Kiwis judicial review, including:
 - a. Reassessing the ratio of offline and online allocations.
 - b. Reviewing offline allocations and considering options for changes to their criteria and for the introduction of a new allocation category for non-urgent cases.
 - c. Considering options for streamlining the emergency offline allocations process to increase the speed in which applications are assessed and decisions made.
 - d. Assessing improvements to the Managed Isolation Allocation System (MIAS) and/or other possible replacement systems for the online allocations process.
5. **Annex One** provides further background on how MIQ's allocation model operated until February 2022.

The judicial review found issues with the way MIQ allocated rooms

6. MIQ's allocation model was originally designed to primarily manage the flow of people into New Zealand through online allocations (using the MIAS virtual lobby), which provided those who intended to travel with an equal chance of obtaining a room voucher and allowed them to enter New Zealand. Offline allocations, in particular the emergency allocation process, was used to prioritise individuals based on their need to return. The judgement determined that this system was not appropriate to the extent that it didn't sufficiently allow individual circumstances to be sufficiently prioritised where necessary.

The High Court's declaratory judgement determined that between 1 September 2021 and 17 December 2021, the MIQ system operated as an unjustified limit on the right of New Zealand citizens to enter their country

7. The first declaration of the judgement states that:
 - a. the virtual lobby was the main pathway through which overseas New Zealand citizens could exercise their right to enter the country;

- b. the virtual lobby did not prioritise places in MIQ on the basis of New Zealand citizenship, nor on a New Zealand citizen's need to enter New Zealand or the delay they were experiencing in exercising their right;
- c. an offline system for emergency places in MIQF (the emergency allocation system) was an inadequate mechanism to address the deficiency of the virtual lobby system because the criteria for emergency places were tightly prescribed, strictly and, in some respects, incorrectly and inflexibly interpreted;
- d. the MIQ system did not have an adequate mechanism for determining whether a New Zealand citizen was experiencing unreasonable delays that were disproportionate to any public health risk they might present.

8. Judge Mallon concluded:

"The combination of the virtual lobby and the emergency allocation system meant that the MIQ system, because and to the extent that it did not allow New Zealand citizens facing unreasonable delays to be considered and prioritised where necessary, operated as an unjustified limit on the right of New Zealand citizens to enter their country. It inevitably meant that in some instances that right could be breached."

The High Court also found that the Grounded Kiwis succeeded in its claim that the Chief Executive of MBIE had acted unlawfully in some respects

- 9. The second declaration found that the Chief Executive of the Ministry of Business, Innovation and Employment erred in law in the exercise of her powers under the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 in that:
 - a. in relation to emergency allocations in MIQ, prior to 25 September 2021 the criteria that required all emergency allocation applications to be submitted within 14 days of a person's departure for the application to be considered, was misinterpreted through a practice by which a departure date was inaccurately estimated from the arrival date when the departure date was not provided;
 - b. in relation to emergency allocations in MIQ, prior to 22 November 2021 the criteria that required there to be "no other option" but to return to New Zealand was misinterpreted by applying it only to persons presently liable to deportation and requiring a particular and narrow form of evidence of that liability;
 - c. in relation to group allocations in MIQ (another offline system for allocations in a MIQF), prior to 20 November 2021 allowing decisions on those allocations to be made by the Minister for COVID-19 Response acting with a Ministerial Group (the Border Exceptions Ministerial Group) rather than making those decisions by herself as required by the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020.

MBIE is proposing a broad range of changes to any future allocation model to address the issues raised in the judgement

- 10. MBIE is proposing to create an allocation framework that will prioritise New Zealanders based on broader and a more compassionate range of individual circumstances and/or by the extent to which they are experiencing an unreasonable delay to enter New Zealand.
- 11. This includes establishing a new allocation for compelling reasons for travel that are time sensitive, adding prioritisation capabilities to MIAS, improving the emergency allocation operational processes, and adjusting the ratio of online and offline allocations to provide more rooms for those with an urgent or compelling reason for travel.

12. The purpose of this briefing is to address the issues within scope of the judgement using an MIQ-based approach as it would only be implemented through the activation of the Readiness Plan (i.e. the re-establishment of managed quarantine for border arrivals). It is not intended to consider other options for managing demand at the border such as introducing a requirement to apply to leave New Zealand while there is a border closure.
13. To address the matters raised in the first declaration of the judgement, MBIE is seeking your in principle agreement to:
 - a. introduce a new 'compassionate consideration' offline allocation for compelling, time sensitive but non-urgent reasons for travel;
 - b. add prioritisation criteria to allow MIAS to prioritise room allocations to New Zealanders by the number of unsuccessful attempts they have made to secure a room through MIAS and whether they have left the country after border closures were announced;
 - c. align the ratio offline and online allocations to the number of rooms available under the Readiness Plan.
14. Final ministerial agreement for the allocation settings would be sought if the Readiness Plan was ever activated. This is to ensure that the settings are appropriate at the time.
15. MBIE is also seeking your agreement to amend the emergency allocation criteria to remove Category 4 (citizens overseas before November 2020 with expiring visas) and Category 5 (hardship for travellers from Australia), as they are no longer necessary.
16. MBIE has already addressed the matters raised in the judgement's second declaration in late 2021 by updating its guidance and interpretation of the emergency allocation criteria (further details to be provided later in this briefing) and modifying its group allocation process in November 2021, to reflect changes to the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020, which allowed Ministers, rather than the Chief Executive of MBIE to make decisions on group allocations.

MBIE has considered the outcome of the judicial review and recommends that allocation criteria should be applied to all New Zealanders with a statutory right to enter New Zealand

17. New Zealand citizens, permanent residents, and resident visa holders who have already been in New Zealand have a statutory right to travel to and enter New Zealand. For New Zealand citizens this right comes from the Immigration Act 2009 and is reinforced by the Bill of Rights Act 1990 (BORA). For Permanent Residents and Resident Visa Holders who have previously entered New Zealand this right is derived from the Immigration Act 2009. For the purposes of this paper, references to 'New Zealanders' refers to someone who has a statutory right to enter New Zealand, regardless of their citizenship status.
18. The Court's discussion in the Grounded Kiwis judicial review was limited solely to a consideration of BORA. It did not discuss the rights provided for in the Immigration Act 2009 or whether changes to the existing allocation should prioritise New Zealand citizens over other groups with a statutory right to enter New Zealand, such as permanent residents. However, the impacts of being unable to return to New Zealand are much the same whether a person is a New Zealand citizen, a permanent resident or holds a residence visa.
19. Accordingly, in absence of a clear precedent which establishes that New Zealand citizens should be prioritised over other New Zealanders, we recommend you agree in principle to expand the eligibility of criteria proposed in this briefing to all New Zealanders with a statutory right to enter New Zealand.

Creating a new offline allocation for compelling reasons for travel that is not urgent, but time sensitive

20. MBIE recommends that you agree in principle to create a new offline allocation for 'compassionate consideration' that provides a pathway for New Zealanders with compelling reasons for travel that are not non-urgent, but time sensitive
21. The new allocation will expand the eligibility criteria and timeframes for applications to enter New Zealand while quarantine and/or isolation requirements are in effect and place greater emphasis on individual circumstances (such as hardship or unreasonable delays) that will be used to prioritise entry into New Zealand. This will reduce the risk of New Zealand citizens experiencing an unjustified limit on their right to return to New Zealand compared to the previous allocation approach.

Principles used to determine the new criteria

22. The following principles have been used to determine the eligibility criteria for the new allocation. The reason for travel should be:
 - a. **Compelling:** eligible applicants are experiencing, or will foreseeably experience, serious hardship and/or an unexpected, significantly disruptive change in personal circumstances that would warrant a need to prioritise the individual to enter New Zealand.
 - b. **Non-urgent:** urgent situations are already addressed by the existing criteria. However, there are situations that are not emergencies requiring immediate travel, which could be addressed through the emergency allocation if there is evidence that the reason for travel is time sensitive and needs to be undertaken within the four-month window to avoid hardship/distress.
 - c. **Provable:** eligibility can be demonstrated using an evidence base that minimises subjective assessments and can be applied in a fair and consistent way between applicants.
23. The principles were selected based on previous experience managing offline allocations and the need to balance compelling reasons for travel with the ability to operationalise the allocation effectively. Overly subjective criteria may run the risk of increasing inconsistent decisions and causing delays in processing applications.

Proposed categories

24. We propose using the following categories as a baseline list of compelling reasons for travel. It is not intended to be exhaustive. Additional categories and criteria can be added or modified as required. A monitoring capability could be established to survey returnees' reasons for travel to determine which new categories and criteria need to be added or augmented. **Annex Two** provides a detailed explanation of the criteria for the categories below.
 - a. Pregnancy, where there are compelling reasons for the pregnant woman and/or her nominated support person to travel to New Zealand;
 - b. Visa expiring;
 - c. Financial hardship;
 - d. Disruption to a planned move to New Zealand from overseas;
 - e. Access to medical treatment;

- f. Preventing an unreasonable delay for a New Zealander seeking to return to New Zealand.

How the allocation is intended to operate

- 25. Applications would be submitted between 1 and 4 months in advance of the intended travel dates. The timeframe will allow for longer processing times, provide certainty to travellers, and to distinguish it from the existing emergency allocation process, which is limited to travel no more than 14 days in advance to retain the ability to travel for unforeseen emergencies at short notice. Rooms would be reserved over several months to ensure that the allocation can be operationalised effectively.
- 26. The new allocation will complement the emergency allocation by providing New Zealanders with a wider range of reasons to return to New Zealand with more flexibility. MBIE has intentionally included criteria relating to visas expiring and for planned medical treatment for in both allocations. This is to ensure sufficient pathways for urgent and non-urgent but time sensitive cases. In these non-urgent cases, applicants would be encouraged to provide their applications as in advance as possible to allow the emergency allocation process to only be used for the most serious and urgent situations.
- 27. Criteria for preventing an unreasonable delay for a New Zealander seeking to return to New Zealand has been included to be used as a 'catch-all' for circumstances where a New Zealander is unable to return to New Zealand, despite significant efforts to do so. New Zealanders are eligible after Confidential advice to Government attempts to secure a room through MIAS (or equivalent online allocation system) and if they are not eligible under any of the other offline allocation criteria. The number of unsuccessful attempts in the criteria may need to be modified or weighted over time the longer border settings remain in place to account for the number of room releases.
- 28. This category may not be required if enhancements are made to the online allocation system to enable it to prioritise effectively, which is discussed further in this briefing. We recommend maintaining this category to ensure that if the online allocation were to fail in some way (for example, an outage) there is always an alternative method for New Zealander experiencing undue delays to be able to return to New Zealand.

Risks and mitigations

Abuse of the allocation category by providing misleading information

Confidential advice to Government

People may use the new allocation in ways it was not designed for to gain preferential travel

Confidential advice to Government

32. There is a trade-off between expanding the criteria to ensure that it enables New Zealanders experiencing genuine hardship to return and the potential for increased misuse of the system. On balance, we recommend that the criteria is kept broad to accommodate as many potential cases of hardship as possible, particularly in the early phase of a border closure.
33. If the proposed criteria is implemented, officials will closely monitor how offline allocations are being utilised and provide advice on the criteria to ensure it remains appropriate and consistent as required.

Enhancing and streamlining the emergency allocation

In late 2021, emergency allocation criteria were revised and procedures updated and are already consistent with the court's findings.

34. The judgement found that "no other option" but to return to New Zealand was misinterpreted until 22 November 2021 by applying it only to persons presently liable to deportation and requiring a particular and narrow form of evidence of that liability.
35. In November 2021, the Minister for COVID-19 Response agreed to revisions the emergency allocation criteria under Category 2(c) to extend the eligibility to New Zealand citizens or residents and remove the reference to "no other option". The revised criteria are:
 - a. whose visa to remain in their current location has expired and who have received notice from a local authority of detainment or deportation if they do not depart; OR
 - b. whose visa to remain in their current location has been unexpectedly revoked or shortened due to circumstances outside of their control.
36. A new Category 4 was also created so that New Zealand citizens who had been overseas since before 3 November 2020 and were within 60 days of their visa expiring were also eligible for an emergency allocation (see below).
37. In addition, MBIE adjusted its interpretation of the criteria that all emergency allocation applications are submitted within 14 days of a person's departure date to allow applications to be considered to ensure that arrival date is not used when the departure date is not provided. This is in line with the court's finding.

MBIE has continued to improve its processes as part of its regular business improvement functions

38. MBIE has revised operational processes to streamline the emergency offline allocation if the allocation needs to be re-established in the future. These include:
 - a. improvements to decision making processes to enable faster approval for cases that unambiguously meet the criteria;
 - b. streamlining existing processes to accelerate response times for emergency allocation applications;
 - c. automatic fees waivers for nominated emergency allocation categories to reduce the duplication of processes;
39. These changes will improve the user experience and increase the efficiency of the emergency allocation application process.

We recommend that you agree to remove unnecessary emergency allocation criteria

40. Currently, the emergency allocation criteria has five categories. MBIE recommends that you agree to remove the criteria for Category 4 and 5 as they are no longer necessary.

41. Category 4 allows New Zealand citizens who have been overseas since before 3 November 2020, and who have been unsuccessful in their attempts to secure a MIAS voucher through the regular lobby release process, and whose visa to remain in their current location has expired or will expire in the next 60 days to access an emergency allocation.
42. Category 5 allows for New Zealand citizens, including their partners and dependent children, who during the period between 24 November 2021 and 21 December 2021 made a booking to travel from Australia to New Zealand between 17 January 2022 and 28 February 2022, and have taken significant steps where a delay in travelling from Australia to New Zealand beyond 28 February 2022 will result in significant financial hardship, or an unsafe or insecure living situation to access an emergency allocation.
43. If agreed to, the 'compassionate consideration' criteria and remaining emergency allocation criteria will sufficiently cover similar situations to those covered by Categories 4 and 5 but with broader criteria and more flexible travel times. A full list of the remaining criteria is provided in **Annex Three**.

Adding prioritisation capabilities to MIAS

Prioritising New Zealanders through MIAS by the number of unsuccessful attempts to secure a voucher through MIAS they have made will help reduce the risk of New Zealand citizens experiencing unreasonable delays to return to New Zealand

44. MBIE has explored several options to better utilise online allocations that prioritise New Zealanders to address the judgement's finding that "the virtual lobby did not prioritise places in MIQ on the basis of New Zealand citizenship, nor on a New Zealand citizen's need to enter New Zealand or the delay they were experiencing in exercising their right."
45. We consider enhancing MIAS to be the most time and cost-effective measure in the short term. To implement these changes, we are seeking your agreement in principle to the criteria below.

Criteria to prioritise individuals through MIAS

46. We have selected the following criteria in **Table 1** to be used to prioritise MIAS lobby participants to ensure that it automatable. This means using information that has reliable datasets that can be validated and minimises or avoids the need for subjective human decision making.
47. It also aligns with the criteria in the proposed 'compassionate consideration' allocation for preventing an unreasonable delay for a New Zealander seeking to return to New Zealand. By prioritising New Zealanders primarily on the number of unsuccessful attempts to secure a room through MIAS, it changes the lobby system from providing an equal chance of all participants securing a room to giving the highest chance of receiving a room to those who have experienced the greatest delay.

Free and frank opinions

Table 1: Criteria for prioritising MIAS lobby participants

Criteria	Possible dataset(s)	Rationale for inclusion
Have a statutory right to enter New Zealand	<ul style="list-style-type: none"> • DIA passport and/or citizenship data • Immigration NZ 	Those with a statutory right under the New Zealand Bill of Rights Act 1990 (New Zealand Citizens) and the Immigration Act 2009 (Permanent Residents that have previously entered New Zealand) should have prioritised entry over individuals who do not.
Number of unsuccessful	Confidential advice to Government	The number of unsuccessful attempts an individual makes can be used as a proxy measure for

<p>attempts to secure a room through MIAS</p>	<p>implemented through a single customer portal</p>	<p>whether they are incurring an unreasonable delay to enter New Zealand.</p> <p>It is also a fair and measurable dataset to compare New Zealanders wanting to enter New Zealand without an urgent or compelling reason to do so.</p> <p>A greater number of unsuccessful attempts would prioritise an individual's place in MIAS.</p> <p style="text-align: center;">Confidential advice to Government</p>
<p>Whether they have left the country after border closures were announced</p>	<p>Determined by government announcements</p> <p style="text-align: center;">Confidential advice to Government</p>	<p>Those who have chosen to travel out of New Zealand after travel warnings and restrictions have been announced have actively placed themselves into a situation that has an increased risk of experiencing difficulties returning to New Zealand.</p> <p>We consider that with all the other criteria above being equal (i.e. have had an equal number of unsuccessful attempts) and regardless of reason for travel, it is reasonable to give preference to those who have not left New Zealand after border restrictions were announced over those who have.</p> <p style="text-align: center;">Confidential advice to Government</p> <p>The emergency allocation is in place to allow for New Zealanders with urgent reasons to travel to enter New Zealand. For example, a family member falling seriously ill or to attend a funeral.</p>

Key assumptions, potential risks, and mitigations

48. If you agree to the MIAS prioritisation criteria, MBIE will undertake further work on IT requirements and other operational requirements to implement the changes to MIAS. It is assumed that future lobby releases will be used to allocate rooms and that they are consistent and similar in size and occurrence.

49. Confidential advice to Government

Free and frank opinions

50. It is intended that the prioritisation criteria could be applied primarily when the demand for rooms outstrips the supply. This is because if usable rooms are being underutilised, all

individuals with a statutory right to enter New Zealand will be able to do so. The need to prioritise rooms only arises when there are prolonged periods of demand outstripping supply.

51. Free and frank opinions

Updating allocation settings to align with the Readiness Plan

52. When MIQ's initial allocation policy was formed at pace in 2020, it assumed that the fairest way to provide rooms was to ensure that all people who sought to obtain one had an equal opportunity to do so through MIAS, unless there a serious and/or urgent need to enter New Zealand.

53. This approach works well when the demand and supply of rooms are near equal. It is suboptimal when demand substantially outstrips supply and there has been a prolonged border closure. As the judgement found, the system at the time did not sufficiently prioritise New Zealand citizens based on need or those experiencing an undue delay.

54. Our proposed approach means adopting an allocation approach that starts with prioritising people who are experiencing hardship and or have an urgent need to enter New Zealand. This means establishing the emergency allocations and compassionate consideration processes as quickly as possible, while maintaining some flexibility to respond to other groups who are prioritised by Ministers at the time through the group allocation (or similar) process (see below).

Ratio of offline and online allocations based on the Readiness Plan

55. The Readiness Plan intends to provide up to 1,500 rooms in the first three to four weeks after activation (phase 1) and up to 6,000 rooms available after eight weeks from activation (phase

Confidential advice to Government

Maintaining flexibility in the allocation model to allow for future Ministerial decisions

59. We recommend maintaining a flexible approach to deciding how allocations will be assigned. Our experience during the COVID-19 response was that it is challenging to anticipate which groups will need to return to New Zealand and Ministers are best placed to make those trade-offs, particularly when factoring the right to enter New Zealand under the New Zealand Bill of Rights and the Immigration Act 2009.
60. The COVID-19 Response Act had provisions to consider economic and social reasons as part of the response. We would expect a similar piece of legislative framework to be in place to allow Ministers to make these trade-offs when determining which groups should enter New Zealand.
61. Confidential advice to Government

Next steps

62. If you agree in principle to the prioritisation criteria for MIAS, MBIE will determine the IT and operational requirements to upgrade MIAS so that the capability can be activated if required and provide you with an update in August.
63. If you agree to remove Category 4 and Category 5 from the emergency allocation criteria, MBIE will update the existing criteria to the remaining criteria outlined in **Annex Three**.
64. If you agree in principle to create a new compassionate consideration offline allocation for New Zealanders, revise the online and offline room allocation ratios, and the options above, further advice on its implementation will be provided if the Readiness Plan was ever activated, or Cabinet agreed to re-establish managed quarantine requirements for border arrivals.

Annexes

Annex One: How MIQ previously allocated rooms until February 2022

Annex Two: Criteria for the 'compassionate consideration' offline allocation

Annex Three: Updated emergency allocation criteria

Annex One: How MIQ previously allocated rooms until February 2022

Determining the number of rooms available for allocation

In determining the number of rooms that are available to be allocated for managed isolation, the number of the total rooms available and what purposes they are used for needs to be considered.

'Useable rooms' is a term to describe MIQ's capacity that can be allocated in advance to facilitate the entry into New Zealand. The concept is important because it provides the baseline for the number of rooms available to be allocated and can change significantly depending on system settings.

It is determined by taking the total number of rooms across all MIQ facilities and subtracting rooms that are used for quarantine, Infection Prevention and Control (IPC) practices and/or operational requirements. For example, reserving rooms for contingency or cleaning them after use means that those rooms are not available for allocation despite being unoccupied.

While this determines the number of rooms that are available to be allocated, the overall capacity is determined by the length of time required to remain in managed isolation. A reduction in the amount of time required to stay at a MIQ facility (i.e. from 14 days to 7 days) means that rooms can be utilised more often over the same period.

For example, 4,500 rooms are available for allocation, that will equal to 9,000 rooms across a 28-day period based on a 10-day isolation period. This accounts for cleaning and cohorting¹ fill/empty times on either side of the 10-day period. On average, there are 1.4 people per room per stay.

'Online' and 'offline' allocations

Usable rooms are then separated by the way that they are allocated to travellers, either allocated online through a website, or manually allocated through other processes run by MBIE. The primary method of allocating rooms was through the online allocation, where users booked rooms through the MIAS website, which originally operated on a first-come, first served basis.

From September 2021, the virtual lobby was introduced to the MIAS website. Rooms would be released through the lobby at publicly announced times and users would be put into a randomised queue to enter the MIAS website to book. There was no prioritisation in this queue to access the online rooms. Approximately, 75 percent of all usable rooms were allocated through online allocations.

An offline allocation refers to rooms that are allocated through a manual process where applications were considered against specific criteria determined by the Minister for COVID-19 Response. The offline allocations were designed to address specific needs where entry into New Zealand should be prioritised. Three types of offline allocations were established:

- a. **Emergency Allocations:** used to ensure that individuals with an urgent humanitarian or exceptional reason to travel to New Zealand would be able to secure a space (approximately 300 to 800 rooms per month).
- b. **Group & Sector Allocations:** These allocations were based on the purpose for travel or entering New Zealand. Group Allocations allocated rooms to large groups with a government-recognised priority to enter New Zealand. Sector allocations were where a certain number of rooms were held in reserve each month to facilitate entry into New Zealand for certain priority sectors. Examples include allocations for the US Antarctic

¹ MBIE also followed a cohorting protocol based on public health advice. This meant that facilities could only be filled with arrivals across a 96-hour period. This mitigated the health risks of intra-facility transmission where returnees late in their stay could interact with returnees earlier in their stay. After this time, no new arrivals could enter the facility.

Programme, international sports teams, refugees, and healthcare workers (approximately 600 to 1,600 rooms per month).

- c. **Time Sensitive Travel:** for workers travelling to undertake time sensitive tasks with significant consequences if not completed (approximately 400 spaces per month)

Offline allocations involved a resource-intensive process where individual applications were considered against prescribed criteria. To ensure the integrity of the allocation system, MBIE required a high level of evidence to verify that these travellers' circumstances met the criteria.

The Minister for COVID-19 Response determined the apportionment between online and offline allocations and decide allocation criteria through the COVID-19 Public Health Response Amendment Act 2021. Ministers determined policy settings for groups of people while MIQ made operational decisions relating to individual cases based on the established criteria.

Annex Two: Criteria for ‘compassionate consideration’ offline allocation

References to ‘New Zealanders’ includes New Zealand citizens, permanent residents, and resident visa holders who have already been in New Zealand, who all have a statutory right to travel to and enter New Zealand.

Criteria	Who is eligible	Factors that affect eligibility
Pregnancy	The pregnant woman outside New Zealand and their accompanying spouse/partner OR	Confidential advice to Government
	a support person outside New Zealand nominated by a pregnant woman in New Zealand	
Visa expiring	A New Zealander outside of NZ	
Financial hardship	A New Zealander outside of NZ	

		Confidential advice to Government
Disruption to a planned move to New Zealand from overseas	A New Zealander outside of New Zealand	
Access to medical treatment (Note: also a category 1a(i) & 1a(ii) under the Emergency Allocation criteria).	A New Zealander that requires access to medical treatment either for the applicant or their dependent.	
Preventing an unreasonable delay for a New Zealander seeking to return to New Zealand	A New Zealander outside of New Zealand who has been unable to return to New Zealand, despite significant efforts to do so.	

Annex Three: Updated emergency allocation criteria

Category 1

1a) New Zealand citizens or residents:

- i. requiring access to time-critical medical treatment for the applicant or their dependant, which has been scheduled in New Zealand and is unavailable or inaccessible in their current location; OR
- ii. requiring access to time-critical medical treatment for the applicant, or their dependent, which is scheduled overseas and has been confirmed by a New Zealand medical specialist as being unavailable in New Zealand, and where timely return travel is unlikely to be possible if the person books through the Managed Isolation Allocation System; OR
- iii. who are in a location or situation where there is a serious risk to their safety and their only option is to return to New Zealand, taking into account advice from the Ministry of Foreign Affairs and Trade where relevant; OR

1b) Where urgent travel is required to ensure a child under 18 is provided with appropriate care and protection.

Category 2

2a) New Zealand citizens or residents who are required to provide critical care for a dependant person in New Zealand and need to travel urgently to do so.

2b) A person whose entry to New Zealand is time-critical for the purpose of commencing work that involves delivering a critical public or health and disability service, such as the clinical and direct provision of health services required to prevent serious illness, injury or death; or the maintenance of essential infrastructure or lifeline utilities whose failure would result in significant harm or disruption to a large number of New Zealanders.

2c) New Zealand citizens or residents whose visa to remain in their current location:

- i. has expired and who have received notice from a local authority of detainment or deportation if they do not depart; OR
- ii. has been unexpectedly revoked or shortened due to circumstances outside of their control.

2d) New Zealand and non-New Zealand citizens, where national security, national interest or law enforcement reasons require urgent travel to New Zealand, or return travel to New Zealand is required on the completion of national security, national interest or law enforcement duties overseas.

2e) New Zealand citizens or residents:

- i. entering New Zealand to visit a close relative who is living with a terminal illness or end-stage disease (with a life expectancy of 6 months or less) or has recently suffered a life-threatening medical event, where timely travel is unlikely to be possible if the person books through the Managed Isolation Allocation System; OR

ii. who are living with a terminal illness or end-stage disease (with a life expectancy of 6 months or less) entering New Zealand to visit a close relative or to reside in New Zealand, where timely travel is unlikely to be possible if the person books through the Managed Isolation Allocation System; OR

iii. who are living with a terminal illness or end-stage disease (with a life expectancy of less than 6 months) who have travelled or are travelling to visit a close relative who resides overseas, where timely return travel is unlikely to be possible if the person books through the Managed Isolation Allocation System; OR

iv. who have travelled or are travelling to visit a close relative who is living with a terminal illness or end-stage disease (with a life expectancy of 6 months or less) or has recently suffered a life-threatening medical event, and resides overseas, where timely return travel is unlikely to be possible if the person books through the Managed Isolation Allocation System.

2f) Citizens or residents of Pacific countries requiring access to time-critical medical treatment which has been scheduled in New Zealand that is unavailable in their own country, and accompanying clinical personnel or essential caregivers.

Category 3

3) New Zealand citizens or residents who have suffered the bereavement of a close relative within 14 days of the date of application and urgently need to:

a) return to New Zealand where the close relative died in New Zealand; OR

b) travel to another country, and return to New Zealand, where the close relative died in that other country, including for the purposes of accompanying the body of the deceased to New Zealand:

- where timely return travel is unlikely to be possible if the person books through the Managed Isolation Allocation System.