

Memorandum

TO	MIQ Policy, Ministry of Business Innovation and Employment
FROM	Peter Brunt, Deputy Chief Executive Regulatory Frameworks, Maritime New Zealand
DATE	10 May 2023
OUR REF	D23/21893
SUBJECT	Maritime Allocation – Future MIQ Settings

Purpose

To advise the Ministry of Business, Innovation and Employment (MBIE) on revised parameters for a maritime allocation that could be actioned as part of future Managed Isolation and Quarantine (MIQ) settings.

Context

In March 2023, the Chief Ombudsman published his opinion following an investigation into issues New Zealand offshore seafarers had accessing Managed Isolation and Quarantine (MIQ) during 2020 – 2022. The Ombudsman recommended that, if the need to use an MIQ system arises again, MBIE (who previously administered the system) should provide fresh advice to the Government on how the MIQ system can better account for the interests of New Zealand offshore seafarers.

MBIE has accepted this recommendation, and asked Maritime NZ for independent advice on which NZ seafarers should be included in a revised maritime allocation under any future MIQ settings.

Advice

Outcome sought and policy rationale

We recommend that any future MIQ system should provide a dedicated offline maritime allocation for all New Zealand Seafarers returning home to New Zealand at the end of their contracts. This allocation should be available regardless of when and how often in any given year a New Zealand Seafarer left to take up their international contract and then needed to return at the end of that contract.

This would in effect expand the Maritime allocation previously available for crew change in New Zealand and individuals returning by ship, to include any NZ Seafarer returning home at the end of their contract.

Given the challenges international seafarers face around connectivity and the unpredictable nature of their employment contracts (which makes it difficult for seafarers to determine exactly when they will need to return home), we recommend that anyone who can prove their status as a New Zealand Seafarer returning at the end of their contract be able to access an MIQ room under this allocation on arrival to New Zealand. I.e. they do not need to go through a booking system.

The policy reasons for providing this more comprehensive maritime allocation in this way are:

- a) The expectations placed on New Zealand by the Maritime Labour Convention (MLC) and UN General Assembly Resolution on Seafarers as key workers.
- b) The critical contribution seafarers make to maintaining global supply chains and other key economic links, which are of major importance to New Zealand. Supply chain performance was a key driver for establishing a maritime allocation in MIQ for international crew change during the COVID-19 response. We consider the global supply chains and other key economic links argument applies equally to New Zealanders working as seafarers abroad.
- c) The risks to safety and welfare of seafarers disembarking in international ports at the end of their contracts - often in unpredictable and / or dangerous circumstances.

Definition of seafarers for the revised Maritime Allocation

We recommend that this revised maritime allocation in a future MIQ system is available to a New Zealand resident or citizen who also meets the first part of the definition of seafarer in the Maritime Transport Act (MTA), namely:

a) any person who—

I. is employed or engaged on any ship in any capacity for hire or reward; or

II. works on any ship for gain or reward otherwise than under a contract of employment;

We consider this definition would appropriately include associated seafarer roles such as surveyors, fumigators, stockmen, FIFO pilots and divers (and associated support roles); who are as critical to the operation of vessels and supply chains as other crew. There is no rationale for excluding such roles, based on the policy drivers above.

To ensure these associated roles are captured, we recommend not including the second part of the MTA definition (if it is used): *“does not include a pilot or any person temporarily employed on a ship while it is in port”*.

Alternatively, the bulk of the definition of ‘crew’ under the (now revoked) COVID-19 Maritime Border Order may also be suitably broad enough to capture the range of seafarer roles we think are important to include:

crew—

(a) means the persons employed or engaged in any capacity on board a ship; and

(b) includes—

(i) a master; and

(ii) a person who is temporarily working on a ship;

Again, to ensure that key associated roles (in this case, FIFO pilots) are included, we do not recommend including the last point in this definition: *(b) (iii) does not include a pilot.*

We do not recommend MIQ settings adopt a NZ Seafarer definition that differentiates between seafarers working on different types of international vessels - for example, to exclude seafarers not working in supply chain based roles. This is because the key policy drivers for the revised maritime allocation apply regardless of which role a seafarer fills across different vessel types. It would also

be difficult in practice to distinguish between different roles and the relative economic versus other contributions they make. Attempting to make these distinctions is likely to raise significant equity questions. Finally, the relatively small numbers involved such an allocation is unlikely to make such a differentiation worthwhile (differentiation is unlikely to affect the total number of rooms required).

Whilst we are recommending that the definitions used ('seafarer' or 'crew') are framed broadly enough to capture roles that are critical to the operation of vessels and supply chains, there may be rare occasions where individual cases do not fall cleanly within these definition We therefore also recommend that the agency overseeing the maritime allocation be able to admit by exception New Zealanders who are undertaking such roles.

Coastal shipping

There are circumstances where coastal ships normally operating in New Zealand and crewed by international seafarers may be forced to temporarily leave New Zealand waters; which would fall outside the definitions above and may not be captured by other allocation routes. While these circumstances will be rare, we recommend that the agency overseeing the maritime allocation to admit to MIQ by exception other non-New Zealand seafarers disembarking a vessel on which they have worked, where that is necessary for the maintenance of supply chains or welfare reasons.

Implementation

We recommend that a future MIQ system should have available an estimated 100 rooms overall to cover: returning New Zealand seafarers; any exceptions (as described above); international crew change in New Zealand; and pacific island crew. Based on current estimates (which suggest 40-50 returning New Zealand seafarers per month), we suggest that, for administrative ease, these rooms be made available within a single facility.

We suggest the system should enable a process where NZ Seafarers who can prove their status can return to NZ and go straight to a MIQ facility without needing to book. There are likely to be a range of ways in which Seafarers can prove their status, including: presenting the correct certification (to demonstrate they are a seafarer), employment contracts (to demonstrate they are returning directly from a contract) and / or endorsements from shipping agents.

To ensure this process works as smoothly as possible, the agency overseeing the allocation should work closely with shipping agents, travel providers and others in the sector to regularly manage and predict numbers.

On balance, we consider the most appropriate agency to oversee this allocation would be Maritime NZ. This view reflects Maritime NZ's existing understanding of and relationships with the sector. We note however, that this would be a significant extension to our role, requiring appropriate resourcing and, as noted above, support from shipping agents and the sector.

Costs

In the course of our work to develop these recommendations, the question of who should pay for MIQ accommodation under a specific allocation for New Zealand Seafarers has arisen.

Our view is that the costs of accommodation under a future allocation for New Zealand seafarers should not be met by individual seafarers. This view is based on the core policy reasons for providing this allocation (expectations under the MLC, support for international supply chains and the need to address the risks to safety faced by seafarers disembarking abroad); noting that:

- the MLC makes specific reference to repatriation costs being covered by the operator or flag state;
- the core benefits of making provision for the allocation would appear to flow strongly to the operator; and
- our understanding is that the costs of MIQ accommodation for international crew change in New Zealand during the COVID-19 pandemic were covered by operators - which reflects a number of the points above. There does not seem to be justification for treating one set of seafarers differently to another; particular as the drivers (supply chains) and distribution of benefits are similar.

We recommend that an early design focus in the establishment a future MIQ system covering New Zealand seafarers, should be engagement with operators and shipping agents to discuss how accommodation costs are to be charged; with the objective of avoiding direct charging to seafarers.

Potential Drafting for any future instrument

We consider that the drafting produced by Kevin Judkins for an allocation for New Zealand citizen and resident crew under the (now revoked) COVID-19 Maritime Border Order provides a good starting point for the drafting of any future allocation provision, namely:

Crew of ships who disembark at a foreign seaport and are being repatriated at the end of their contracts.

- (6) *Subclause (7) applies to a New Zealand citizen or resident crew member who has arrived in New Zealand—*
- (a) at a security designated aerodrome on board an aircraft; and*
 - (b) for the purpose of repatriation to the crew members place of residence or home port in New Zealand without departing from New Zealand.*
- (7) *The crew member must travel from the security designated aerodrome to a place of isolation or quarantine for the purpose of the crew member completing their period of isolation or quarantine as required by clause 23.*

Final drafting will need to vary based on the preferred definition of 'seafarer' or 'crew'; and would need to include the facility to admit by exception: returning New Zealanders working in other roles that provide critical services to international ships (where not clearly captured by the definition of 'crew' or 'seafarer'); and non-New Zealand seafarers disembarking vessels on which they have worked, for supply chain or welfare reasons.

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