



MEMO

DATE	30 May 2023
TO	Shayne Gray, General Manager, Managed Isolation and Quarantine
PREPARED BY	Amy Lewis, Senior Policy Advisor
APPROVED BY	Joe Harbridge, Principal Policy Advisor
SUBJECT	UPDATED ADVICE ON MIQ ALLOCATION SETTINGS FOR NEW ZEALAND SEAFARERS

RECOMMENDATIONS

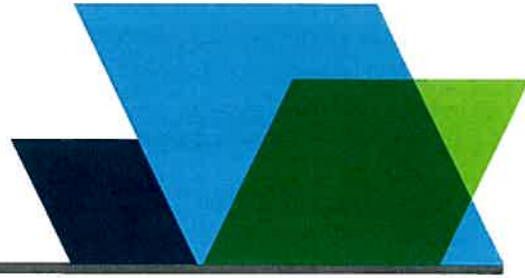
Note the Ombudsman has recommended fresh advice on allocation settings for New Zealand seafarers is provided to Ministers should Managed Isolation and Quarantine (MIQ) ever be required again;

Agree that the following approach could be provided as fresh advice, if required in future, on facilitating New Zealand seafarers¹ return to New Zealand:

- New Zealand seafarers are included under the offline maritime allocation, with eligibility and demand managed by a dedicated maritime allocation operations team that includes staff from Maritime New Zealand (MNZ);
- Subject to the overall future quarantine capacity, the maritime offline allocation should be increased from 80 to 100 rooms to account for the additional demand from New Zealand seafarers;
- Should demand exceed the allocation and no other rooms are available, priority will be given to meeting New Zealand's legal obligation under the Maritime Labour Convention to facilitate repatriation for crew members in New Zealand and Pacific-based crews;
- MNZ is best placed to work with health agencies on an appropriate definition of New Zealand seafarer for any future legislative settings and on establishing a suitable process with shipping agents to predict and manage demand;

Agree to share this memo with Te Pou Hauora Tūmatanui – the Public Health Agency (PHA) and MNZ to be shared with industry stakeholders as they see fit.

¹ For the purposes of this memo, a New Zealand Seafarer could include both New Zealand citizens and resident class visa holders residing in New Zealand who otherwise meet the definition of a seafarer.



PURPOSE

1. This memo provides advice on how to update the MIQ allocation settings for New Zealand seafarers if the need to use the MIQ system (or any future quarantine and isolation system) arises again.
2. This advice was triggered by the Ombudsman's final opinion on the Ministry of Business, Innovation and Employment's (MBIE) allocation advice for New Zealand seafarers. While the Ombudsman's recommendation was for MBIE to provide updated advice, any future advice to Ministers will come from health agencies when responsibility for quarantine and isolation capability transfers back to the health system on 1 July 2023.

INTRODUCTION

3. In March 2021, MBIE provided advice to the former Minister for Covid-19 Response advising him of the MIQ allocation settings for New Zealand seafarers. This advice was provided in response to complaints from seafarers raised in the media and with the Minister of Transport.
4. In July 2021, the Ombudsman launched an investigation into the advice provided for the MIQ allocation settings for seafarers, based on several complaints laid with his Office. The complaints raised issues with using the managed isolation allocation system (MIAS) to secure space in MIQ due to uncertain arrival dates related to nature of the shipping industry, unreliable internet access at sea, unsafe scenarios that disembarking a vessel without a voucher to return to New Zealand created, and that the Emergency Allocation did not cover them.
5. On 21 March 2023, the Ombudsman released the final opinion from his investigation. The Ombudsman found that MBIE acted unreasonably in providing its advice because it:
 - did not sufficiently address the need for international cooperation for global trade
 - did not consider specific New Zealand Bill of Rights Act (NZBORA) implications
 - did not sufficiently address the limitations of the emergency allocation process
 - drew an inappropriate comparison to other fly in, fly out workers.
6. Based on this finding, the Ombudsman recommended that, if the need to use the MIQ system arises again, MBIE provide fresh advice to the relevant minister on offshore seafarers in a manner that addresses the deficiencies he identified. He also recommended an apology to the complainants. MBIE has accepted the recommendations and the MBIE Chief Executive wrote to the complainants in April 2023.

BACKGROUND

Previous MIQ allocation settings for seafarers

7. When MIQ was in operation, MBIE operated a maritime allocation under the former MIQ allocation system. This operated as an offline allocation with 80 dedicated rooms, with occasional spare capacity.



8. The purpose of the maritime allocation was to support maritime border arrivals who typically did not require the full 14 days of quarantine. This includes:
 - replacement cargo crew (foreign crew arriving by air/sea to join a commercial cargo vessel arriving/departing New Zealand who are granted a deemed visa on arrival);
 - commercial cargo crew working on vessels servicing the Pacific; and
 - small craft arrivals of New Zealand citizens (ie yachts arriving from the Pacific).
9. The policy rationale for the maritime allocation (along with provisions for aircrew) was to meet New Zealand's commitments under the Maritime Labour Convention (MLC) and support the continuation of critical supply chains servicing New Zealand. These supply chains enabled the movement of cargo and people into New Zealand through the COVID-19 border restrictions.
10. MBIE established a dedicated maritime operations team to support the complexity surrounding maritime arrivals under the (now revoked) Maritime Border Order (eg MIQ stays averaging three days and flexible arrival dates subject to weather and commercial arrangements of shipping companies). This team worked directly with shipping companies (for commercial crew transfers) and the New Zealand Customs Service (for small craft arrivals) to make MIQ bookings and provide MIAS vouchers for these individuals. There was also a Maritime New Zealand (MNZ) liaison member embedded in the team.
11. New Zealand seafarers overseas were not provided with any preferential MIQ allocation provisions and would need to access MIQ either through the online allocation system, or if they qualified for another priority allocation (eg if facing an emergency situation).

WORK ON THE MARITIME ALLOCATION SINCE THE OMBUDSMAN'S FINAL OPINION

12. Following the release of the Ombudsman's investigation, the MIQ Policy team progressed work on evaluating the suitability of the previous allocation system for New Zealand seafarers. MIQ Policy worked with key agencies who provided input into the previous maritime allocation advice – the Ministry of Foreign Affairs and Trade, the Ministry of Transport and MNZ.
13. MNZ has actively engaged in this review process and their full advice is attached at annex one. MNZ's view is 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." The policy rationale for this is:
 - The expectations placed on New Zealand by the MLC and the United Nations General Assembly Resolution on seafarers as 'key workers.'
 - The critical contribution that seafarers make to maintaining global supply chains and other key economic links, which are of major importance to New Zealand. This argument applies to New Zealanders working as seafarers overseas.
 - The risks to safety and welfare of seafarers disembarking in international ports, often in unpredictable/dangerous circumstances at the end of their contracts.



14. MNZ has estimated that 40-50 New Zealand seafarers may need to utilise the allocation per month.
15. MNZ was also asked to provide advice to determine the definition of a 'New Zealand seafarer.' MNZ has suggested two possible options for this, either based on the definition in the Maritime Transport Act (MTA) or alternatively based on the previous definition of 'crew' under the COVID-19 Maritime Border Order.
16. In MBIE's view, either of these options could be appropriate, but it will depend on how future quarantine legislation is drafted. On this basis, we think the best approach would be for the PHA to engage with MNZ on the drafting of any future legislative settings.

MBIE'S REVISED MARITIME ALLOCATION SETTINGS FOR NEW ZEALAND SEAFARERS

Method of offline allocation

17. We have considered the offline allocation options that could be utilised for New Zealand seafarers. Emergency Allocations are not deemed appropriate for this situation as they are intended for unforeseen emergencies and responding to humanitarian circumstances.
18. The former time-sensitive travel (TST) allocation could be utilised given that its intent is to support critical workers and it grants preferential allocation based on employment status. The TST also relied on the relevant government agency (likely MNZ in this case) to determine eligibility and identify the individuals that could travel under the TST allocation.
19. A dedicated Sector allocation could also be engaged. This type of allocation was based on supporting sectors and employment that provide important services for New Zealand (eg health worker allocation or the Construction Sector Accord allocation).
20. However, the TST and Sector allocations are not well suited to accommodate the flexibility of allocation or the necessary planning support that seafarers require. Seafaring is characterised by unreliable internet access, uncertain arrival dates due to weather and shipping agent contracts, and the need for departing flights from the destination country to be booked ahead of disembarkment for visa purposes.

Recommended method of allocation

21. On this basis, we recommend including New Zealand seafarers in a dedicated maritime allocation as the most suitable option. This option would ensure that New Zealand seafarers were provided with the logistical support that other seafarers had access to. This option can accommodate the changeable arrival dates, the planning requirements of shipping agents, ease the overall traveller experience and align with the allocation category's intent. This option would also enable the agency responsible for allocation to work with the shipping agent/owner as the employer and the responsible party for paying any MIQ fees.



22. To ensure the operational efficiency of this allocation, MBIE recommends that MNZ should again support the maritime operations team. This would ideally involve the embedding of an MNZ official/s within the agency responsible for MIQ.
23. Based on the estimate of 40-50 New Zealand seafarers utilising the allocation per month, and the COVID-19 experience where the maritime allocation often had spare capacity, we recommend the allocation is increased from 80 to 100 rooms. Ideally, MNZ would again be involved in the maritime operations team and would be the lead agency responsible for identifying the individuals who are eligible for this offline allocation.
24. MNZ has also recommended that the rooms within the offline maritime allocation should be made available within a single facility. MBIE does not agree with this based on previous experience of administering the allocation. Maritime allocation arrivals enter the country by both air and sea and do not arrive at a single location in New Zealand.² Due to the shorter periods of isolation that these arrivals undertake and the logistical effort required to transport individuals within New Zealand who have not commenced their quarantine, MBIE suggests that multiple facilities are considered.

RISKS WITH NEW ALLOCATION SETTINGS

25. There is a risk that expanding the maritime allocation may interfere with New Zealand's obligations in the MLC to support the repatriation of crew for vessels arriving/departing New Zealand. The risk of this occurring would be relatively low if MNZ's predicted number of New Zealand seafarers proves accurate, and the allocation size was increased.
26. To mitigate this risk, where no other rooms are available and the maritime allocation is fully allocated, we would recommend prioritising meeting New Zealand's legal obligations under the MLC over the return of New Zealand seafarers. This would include assisting our Pacific neighbours to support repatriation. This would support the global continuation of maritime supply chains. When fresh advice is developed for new allocation settings, MBIE recommends that all allocation settings are considered within the context of our NZBORA obligations.
27. There is a precedent risk that the revised allocation settings may increase expectations that other New Zealanders working overseas should receive priority access for MIQ. MBIE considers this risk is manageable, as reference can be made to the Ombudsman's findings, the MLC, and the need to consider our role in maintaining global supply chains.

NEXT STEPS

28. Should you agree with the proposed approach, we recommend sharing this memo with PHA and MNZ. As MNZ has worked closely with its maritime stakeholders in supporting this process, we also feel it is appropriate for MNZ to share this memo or the high-level outcomes with their stakeholders as they see fit.

² Small craft arrivals were also required to arrive at Opuia in the Bay of Islands under the supervision of the New Zealand Customs Service.



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Managed Isolation and Quarantine, MBIE

Date: 30 May 2023



ANNEX ONE: MARITIME NEW ZEALAND'S ADVICE ON NEW ZEALAND SEAFARER DEFINITONS
