

In Confidence

Office of the Minister of Immigration

Chair, Cabinet

Immigration (COVID-19 Response) Amendment Act 2020: powers to amend resident visa conditions

Proposal

1. This paper responds to the invitation to the Minister of Immigration to develop a policy framework to be agreed by Cabinet with regard to new powers which could be exercised relating to resident visa holders. It asks Cabinet to note the framework that the Minister of Immigration intends to take into account when considering special directions, which will vary or cancel conditions on resident visas, for individuals or classes of residents, following the passing into law of the Immigration (COVID-19 Response) Act 2020.

Summary

2. On 16 April 2020 Ministers with Power to Act on COVID-19 matters agreed to grant the Minister of Immigration the power to impose, vary or cancel conditions of visas for classes of temporary entry class visa holders, by special direction.

3. On 29 April 2020, Ministers agreed to amend the decision of the group of Ministers with Power to Act on COVID-19 matters to enable the Minister of Immigration, under the policy framework to be agreed by Cabinet, to extend the expiry dates of visas for classes of temporary entry class visa holders only, to cover the expiry dates of conditions for holders of resident class visas that have conditions [DEV-20-MIN-0060]

4. The Immigration (COVID-19 Response) Amendment Act 2020 (the Amendment Act) added eight time-limited powers that together are aimed at enabling the Government to better respond to the COVID-19 emergency situation. One of the powers, which can only be exercised by the Minister of Immigration, will enable the Minister to vary (including extend) or cancel conditions for classes of resident class visa holders.

5. A decision as to whether to grant a special direction is in the absolute discretion of the Minister of Immigration. Other than the Minister being satisfied that the exercise of the power is required to deal with the effects or consequences of measures undertaken to deal with the Covid-19 outbreak, the matters or factors that the Minister considers are for the Minister as the statutory decision maker. Accordingly, the Minister intends to make decisions in line with principles or a framework, although it is important to manage legal risks which could arise if the Courts consider that the Minister's discretion has been undermined or unlawfully constrained.

6. People who have gained a resident visa and have not yet applied for and been approved permanent residence, generally have conditions or requirements on their resident visa, for example:

6.1. *travel conditions* – the time-limited ability for a new resident who leaves the country temporarily to return as a resident, or the ability to travel to New Zealand within a specified time (in the case that the resident visa was granted offshore and that person has not yet travelled to New Zealand); and

6.2. depending on the type of resident visa, *employment requirements* – that require the resident visa holder to maintain specific employment for a certain period of time or in a certain place.

7. These resident visa conditions and requirements are separate to any minimum requirements that must be met to access some government services, such as welfare or tertiary loans. These instead are set out in the relevant legislation governing access to those services (such as the Social Security Act) and can only be altered by amendment to the relevant legislation. Only people who have no conditions on their visas may apply for citizenship.

8. The COVID-19 situation will lead to scenarios where groups of individuals will be unable to meet these conditions due to circumstances outside of their control, primarily because they:

8.1. are outside New Zealand and unable to return in order to meet their travel conditions which will result in their resident visa expiring, or

8.2. lose the skilled job they were required to hold for a period of time.

9. Under existing Immigration Act provisions, delegated Immigration New Zealand staff can vary or cancel resident visa conditions and requirements on an individual basis. However this capacity may be insufficient, given the numbers of people who may be affected by COVID-19-related factors and scenarios, and the reduced capacity of Immigration New Zealand to process individual applications resulting from the global lockdown.

10. The Amendment Act enables the Minister of Immigration to group visa holders or visa applicants into classes based on a number of different characteristics for the purpose of varying (including extending) or cancelling visa conditions. These characteristics include (but are not limited to):

- nationality
- the country or place from which they are travelling, and
- the type of visa concerned.

11. In exercising discretion, the Minister of Immigration intends to make decisions in line with a policy framework, which he has discussed with his Cabinet colleagues, as a guide for the Minister to refer to when considering whether to use the power to amend (i.e. vary, such as extend, or cancel) the visa conditions of a class of resident visa holders).

12. The framework may include an assessment of the:

- ability to travel to and enter New Zealand;
- magnitude of the numbers of people involved and whether a 'class' or group approach is warranted against an individual, case-by-case assessment
- characteristics and visas held by members of potential classes or groups of residents
- employment and economic trends in New Zealand.

13. In each case the extension, cancellation or variation of conditions would be time-limited and would only apply to people who have already been granted residence. The use of the powers would not grant people additional rights.

14. All of the special directions which may be made under any of the relevant powers, including this power, must be published and presented to the House and will be disallowable instruments.

Cabinet has agreed to eight new powers

15. The Amendment Act added a number of powers which together are aimed at enabling the Government to better respond to the COVID-19 emergency situation.

16. On 16 April 2020, Ministers with Power to Act on COVID-19 matters agreed to grant the Minister of Immigration the power to impose, vary or cancel conditions of visas for classes of temporary entry class visa holders, by special direction.

17. On 29 April 2020, Ministers agreed to amend the decision of the group of Ministers with Power to Act on COVID-19 matters to enable the Minister of Immigration, under the policy framework to be agreed by Cabinet, to extend the expiry dates of visas for classes of temporary entry class visa holders only, to cover the expiry dates of conditions for holders of resident class visas that have conditions [DEV-20-MIN-0060]

18. The Amendment Act establishes eight time limited powers, five of which relate to classes of people and which can only be exercised by the Minister of Immigration. The other three powers relate to individuals and can be (in one case, only can be) exercised by immigration officers. Table One below summarises the powers, sets out how they are exercised, and identifies who can exercise them.

Table One: Powers established in the Immigration (COVID-19 Response) Act 2020

| | Power | Exercisable by | Delegable to an immigration officer? |
|-----|--|--------------------------|--------------------------------------|
| 1 | To impose, vary or cancel conditions for classes of temporary entry class visa holders | Special direction | No |
| 2 | To vary or cancel conditions for classes of resident class visa holders | Special direction | No |
| 3 | To extend the expiry dates of visas for classes of people | Special direction | No |
| 4 a | To grant visas to individuals in the absence of an application | Special direction | Yes |
| 4 b | To grant visas to classes of people in the absence of an application | Special direction | No |
| 5 | To waive any regulatory requirements for certain classes of application | Special direction | No |
| 6 | To waive the requirement to obtain a transit visa in an individual case | Special direction | Yes |
| 7 | To suspend the ability to make applications for visas or submit Expressions of Interest in applying for visas by classes of people | Order in Council | No |
| 8 | To revoke the entry permission of a person who has been deemed by Regulations to hold a visa and to have been granted entry permission | N/A | N/A ¹ |

19. Section 378 of the Immigration Act 2009 (the Act) establishes a broad special direction power for the Minister of Immigration, and the grounds on which special directions may be made were extended by the Amendment Act. Section 378 sets out that a decision as to whether to grant a special direction is in the absolute discretion of the Minister.

¹ The Government proposes that this power can be exercised directly by an immigration officer, so it is not a delegable power.

20. Matters of absolute discretion are defined in section 11 of the Act. Notably, there is no obligation on a decision maker to consider making an absolute discretion decision (they cannot be applied for), no requirements on the decision maker to make enquiries before making a decision, and no requirement to provide reasons.

21. In the case of the “class” special direction powers in the Amendment Act, other than the Minister being satisfied that the exercise of the power is required to deal with the effects or consequences of measures undertaken to deal with the Covid-19 outbreak, like all absolute discretion decisions, the matters or factors that the Minister considers are for the Minister as the statutory decision maker. In exercising his discretion, the Minister intends to refer to principles or a framework, discussed with Cabinet colleagues, as a guide when making decisions on varying or cancelling conditions for classes of resident class visa holders. However, ultimately the decision to be made is for the Minister alone.

22. If a formal set of principles or framework was made mandatory, or Cabinet decisions were required for the Minister to exercise his discretion, this could create legal risk, as Cabinet does not have a formal decision making role under the legislation. A Court may find that the decision of the Minister was unlawful, as it could be considered to be unlawfully fettered, or unduly influenced by the framework put in place which is not present in the legislation. Legal commentators have raised these issues in respect of the current High Court action against the Director-General of Health, who has a similar statutorily-independent role. The Amendment Act establishes a number of safeguards and limitations for the exercise of the new powers, recognising that their potential scope is large. They include the 12-month sunset clause, and the requirement that they are exercised in response to COVID-19 (or to situations or measures responding to the COVID-19 outbreak).

23. In addition, five of the powers (including the power to vary or cancel conditions on resident visas) must be published and presented to the House and will be disallowable instruments. One power will require the exercise of an Order in Council. The safeguards and limitations are set out in Table Two below.

Table Two: Safeguards and limits for the powers

| Power | Exercisable only where responding to COVID-19 ² ? | Automatically revoked in 12 months? | Publication requirement, disallowance & presented to the House ³ ? | Other |
|--|--|-------------------------------------|---|--|
| 1 To impose, vary or cancel conditions for classes of temporary entry class visa holders | ✓ | ✓ | ✓ | |
| 2 To vary or cancel conditions for classes of resident class visa holders | ✓ | ✓ | ✓ | |
| 3 To extend the expiry dates of visas for classes of people | ✓ | ✓ | ✓ | They may only be extended for a period of up to 6 months |
| 4 To grant visas to individuals in the | ✗ ⁴ | ✓ | ✗ | |

² Specifically, where it is necessary or desirable to manage the effects, or deal with the consequences of, measures taken under the Immigration Act, or any other enactment or otherwise, to contain or manage the outbreak of COVID-19 or its effects.

³ Special directions affecting a class of visa holders or people will, along with an explanation of its effect, be notified in the Gazette and published on MBIE's website. In addition, these special directions are “disallowable instruments” for the purposes of the Legislation Act 2012, and will be presented to the House of Representatives.

| | Power | Exercisable only where responding to COVID-19? | Automatically revoked in 12 months? | Publication requirement, disallowance & presented to the House? | Other |
|-----|--|--|-------------------------------------|---|---|
| a | absence of an application | | | | |
| 4 b | To grant visas to classes of people in the absence of an application | ✓ | ✓ | ✓ | |
| 5 | To waive any regulatory requirements for certain classes of application | ✓ | ✓ | ✓ | |
| 6 | To waive the requirement to obtain a transit visa in an individual case | ✓ | ✓ | ✗ | |
| 7 | To suspend the ability to make applications for visas or submit Eols in applying for visas by classes of people | ✓ | ✓ | ✗ ⁵ | A suspension may be for a period not exceeding 3 months |
| 8 | To revoke the entry permission of a person who has been deemed by Regulations to hold a visa and to have been granted entry permission | ✓ ⁶ | ✓ | ✗ | |

People are granted residence under three broad policy streams

24. New Zealand's residence programme has three broad streams:

- 24.1. The largest is the *skilled / business stream*, which is aimed at recruiting people who can either contribute to our labour market or bring in capital or entrepreneurial skills. New Zealand is in global competition for individuals that this resident stream targets.
- 24.2. The *family stream* enables New Zealand citizens and residents to form families, through the partnership category, or to reunite with family members.
- 24.3. The smallest stream, the *international/humanitarian stream*, includes the refugee and Pacific residence categories, and is one of the mechanisms by which New Zealand acts as a good international citizen.

25. Table Three below sets out the numbers of people approved residence in the last two financial years, and 2019/20 to the end of April, by stream. The figures include the partners and dependent children of the "principal" visa holder (the person who meets the policy requirements for the visa).

Table Three: people granted residence by stream, July 2017 to April 2020

| | 2017/18 | 2018/19 | 2019/20 to April 2020 | Grand Total |
|-------------------------------------|---------|---------|-----------------------|-------------|
| Skilled / Business Stream | 20,920 | 18,545 | 14,176 | 53,641 |
| Family Stream | 13,090 | 11,831 | 8,574 | 33,495 |
| International / Humanitarian Stream | 3,938 | 4,140 | 2,601 | 10,679 |

⁴ This power is not limited to responding to COVID-19, to preserve the Government's ability to respond to other emergency situations which may occur during the COVID-19 outbreak, such as the recent Whakaari/White Island event, and which may result in individuals being hospitalised and unable to apply for a visa.

⁵ Regulations made exercising this power will be publicly available at www.legislation.govt.nz.

⁶ Immigration instructions will set out the limited situations in which an immigration officer can revoke an entry permission.

| | | | | |
|--------------------|---------------|---------------|---------------|---------------|
| Grand Total | 37,948 | 34,516 | 25,351 | 97,815 |
|--------------------|---------------|---------------|---------------|---------------|

26. Within the Skilled/Business stream, more than 70 percent (equivalent to 40 percent of all approvals) have been approved under the Skilled Migrant Category (SMC), generally on the basis of holding a skilled job.

27. Almost 80 percent of the Family stream (equivalent to 27 percent of total approvals) were approved on the basis of a partnership with a New Zealand citizen or resident. Another six percent of the Family stream (two percent of the total) were approved on the basis of being a parent of a New Zealand citizen or resident.

28. A small proportion (seven percent) of the people granted residence in Table Two above were granted permanent resident visas immediately: these are granted to refugees and the foreign partners of returning New Zealand expatriates. Permanent resident visas do not have conditions (see the discussion below), but the other resident visas will have been granted with conditions that are in place for a period of time.

The Immigration Act 2009 allows for visas to be granted with conditions and with certain requirements that must be met

29. Visa conditions either enable the visa holders to undertake specified activities or impose requirements on them. People who hold a resident class visa can live and work in New Zealand indefinitely but for most people this is subject to conditions that are put in place for a period of time. If a resident visa holder does not meet, or breach these conditions, they can lose their residence through being made liable for deportation. The Minister of Immigration (or a delegated immigration officer) may vary a resident visa holder's conditions by special direction on a case-by-case basis.

30. A resident visa holder can apply for a permanent resident visa a minimum of two years after their first resident visa is granted and once they have met the specified requirements of their resident visa. Permanent resident visas do not have conditions attached to them and enable the holder to reside in and travel to and from New Zealand indefinitely. As noted above, a few people – partners of returning expatriates and refugees – are initially granted permanent resident visas.

31. All resident visa holders have time-limited *travel conditions*. Travel conditions entitle a visa holder to travel to New Zealand or return to New Zealand if they have already been here as a resident visa holder, or were granted a resident visa while in New Zealand. For resident visa holders, travel conditions usually last for two years. After a resident visa holder's travel conditions have expired, they either need to apply for a variation of travel conditions (such as an extension to the conditions) or a permanent resident visa (if they qualify).

32. Without doing this, if a resident visa holder leaves New Zealand after their travel conditions have expired (or if they expire while they are out of New Zealand), their resident visa will also expire. This means that they are no longer a resident of New Zealand and do not have the right to travel to, enter and reside in New Zealand.

33. Some visa requirements are specific to particular visa types. A resident visa issued to a skilled worker is likely to have *employment requirements*. This includes that they must remain employed in a skilled job for a period of time, often twelve months.

Applications for residence may be made onshore in New Zealand or offshore

34. Some people are granted residence while they are outside New Zealand. In recent years this has been most common for highly-skilled and paid individuals who have been

recruited from northern Europe or North America. Their initial resident visa must be activated (through travel to New Zealand) within twelve months of being granted, or it will expire. Similarly, temporary entry class visas granted outside New Zealand will expire if not used to travel to New Zealand within a specified timeframe.

The COVID-19 outbreak has meant that some resident visa holders may not be able to meet their visa conditions

35. There are some anticipated scenarios in which the COVID-19 situation may lead to groups of individuals losing their resident status for reasons outside of their control, primarily because they:

- are outside New Zealand and unable to return before their travel conditions expire, or
- lose the skilled job they were required to hold for a period of time (for some people, at least 12 months).

Some residents who are outside of New Zealand may have difficulty returning

36. As at 27 April 2020:

- around 1,800 resident visa holders with travel conditions that will expire in the next six months were outside New Zealand
- around 550 people who had been granted resident visas in the past 12 months and who had not activated their residence (have not entered New Zealand) were outside New Zealand.

37. Commercial flights to New Zealand have reduced. In the week of 27 April there were 25 flights, carrying just over 1,000 passengers, compared with well over 700 per week carrying around 200,000 passengers a year previously. International travel is also particularly difficult where people must transit third countries. At this stage it is unclear when large scale international air travel may resume.

38. Officials have undertaken some analysis of the characteristics of those residents outside of New Zealand whose visas were granted since the beginning of 2017 and who still have travel conditions. However, detailed data and analysis was not available before the completion of this paper and, therefore, the figures below will overstate the numbers who could be at risk of losing the ability to return (which has been separately estimated at up to around 2,350). The two tables distinguish between those residents who have never entered New Zealand and others.

Table Four: Recent New Zealand residents offshore by residence stream

| | Have never entered New Zealand | | Have entered NZ but now offshore | | Grand Total | |
|-------------------------------------|--------------------------------|-----|----------------------------------|-----|--------------|-----|
| Skilled / Business Stream | 427 | 53% | 1,984 | 45% | 2,411 | 46% |
| Family Stream | 230 | 28% | 2,311 | 52% | 2,541 | 48% |
| International / Humanitarian Stream | 152 | 19% | 139 | 3% | 291 | 6% |
| Grand Total | 809 | | 4,434 | | 5,243 | |

Table Five: Recent New Zealand residents offshore by principal and secondary visa holder status

| | Have never entered New Zealand | Have entered NZ but now offshore | Grand Total |
|---|--------------------------------|----------------------------------|--------------|
| Principal applicant | 184 | 2,460 | 2,644 |
| Secondary applicant (partner, children) | 625 | 1,974 | 2,599 |
| Grand Total | 809 | 4,434 | 5,243 |

39. Occupations are only captured for the principal applicants who apply for residence in skilled visa categories and who have a job offer. The total number of people with occupations recorded, and the top ten occupations by number are listed in Table Six below.

Table Six: Top ten occupations of recent New Zealand residents offshore - principal skilled visa holders

| Occupation |
|--|
| Registered Nurse (Aged Care) |
| Cafe or Restaurant Manager |
| Early Childhood (Pre-primary School) Teacher |
| Chef |
| Marketing Specialist |
| Software Engineer |
| Retail Manager (General) |
| University Lecturer |
| ICT Customer Support Officer |
| Resident Medical Officer |

Some residents may lose their skilled employment

40. As at the end of March 2020 there were around 21,000 people who had been granted a resident visa within the previous two years on the basis of skilled work in New Zealand. Between a third and a half of those individuals are likely to be within the period where their residence is conditional on remaining employed in a skilled job, and an unknown number may lose their jobs in the next few months.

41. It is not clear at this time what the medium to long-term economic and employment impacts of the COVID-19 outbreak will be, or what labour market needs might be during the recovery period. These workers, who have been assessed as skilled for residence but have lost their skilled employment, could play a role in New Zealand's ongoing economic recovery.

The Minister of Immigration could deploy the new power to grant more time to meet conditions or could cancel conditions for classes of residents

42. While Immigration New Zealand staff already have a delegated authority to vary conditions on resident visas, this must be undertaken on a case-by-case basis. Immigration New Zealand's ability to address such requests from individuals is currently constrained, and is likely to remain below historic levels for some months. As at early May 2020, more than 1,000 staff globally were not able to enter their workplaces. As alert levels drop, social distancing and safe working requirements will continue to impact on productivity.

43. The Amendment Act allows the Minister of Immigration to group visa holders together to vary (including extend) or cancel visa conditions. This power may be exercised for groups of resident visa holders if it appears that the COVID-19 outbreak (or measures taken in New Zealand or overseas in response) is likely to seriously disadvantage people who otherwise would, for example, have been able to maintain their residence status.

44. Under the Amendment Act, the Minister of Immigration may group visa holders or visa applicants into classes based on a number of different characteristics. These include, but are not limited to:

- their nationality
- the country or place from which they are travelling (whether it is their original departure point or an intermediate point)
- whether or not they hold, or are required to hold, any particular type of travel or immigration documentation, issued by New Zealand or another country
- the type of visa concerned, and
- any other type of visa that they have applied for. (This would not be relevant to people who hold a resident visa.)

45. Although an exercise of absolute discretion, the Minister of Immigration intends to make decisions in line with a framework to consider whether to use the power to amend the visa conditions of a class of resident visa holders. In these circumstances, this framework would be likely to include:

- 45.1. *Assessment of the ability to travel to and enter New Zealand* - up to date information about trends in international travel to New Zealand. For example, if countries were to enable more flights to transit through them, it might be expected that people who were offshore should travel back within the expiry period of their travel conditions.
- 45.2. *Assessment of the magnitude of the numbers of people involved and whether a 'class' or group approach is warranted* against and individual, case-by-case assessment - numbers of requests for special directions (or visas or variations of conditions) from individuals or their agents and Immigration New Zealand's capacity to process such requests in a timely manner.
- 45.3. *Assessment of characteristics and the visas held by members of potential classes or groups of residents* – for example, whether they were granted residence on the basis of employment in New Zealand, and if so some details of that employment (the occupation and the salary payable, and the location of the employment).
- 45.4. *Assessment of employment and economic trends in New Zealand* – such as the picture of the labour market in New Zealand (e.g. levels of unemployment, skills shortages and requirements).
- 45.5. *Having regard to current Government policy.*

46. The Minister intends to apply this framework to the scenarios of the type discussed above in paragraph 35 and consider classes of people who, for example:

- *are offshore with expiring travel conditions* to have those travel conditions extended, for a maximum of six months, so they can return to New Zealand as residents;
- *have been granted residence offshore* a maximum of an additional six months to travel to New Zealand and take up that residence;

- *are onshore and who lose their skilled jobs* (and may lose their residence as a result) to either have more time in which to try and gain further skilled employment or, in the case of very highly skilled people that New Zealand would not want to lose, to cancel that requirement.

47. In each case the extension, cancellation or variation of conditions would be time-limited and would only apply to people who have already been granted residence in New Zealand.

These changes would give no additional access to government services

48. Access to education and to welfare benefits would not be changed by the Minister's power to vary or cancel conditions on resident visas. Such access is governed through the respective systems' legislative and policy settings (in the case of welfare, the Social Security Act 1964). For example, both tertiary education and welfare settings require a minimum length of time spent in New Zealand as a resident – three years on a residence-class visa to access a tertiary education loan, and two years minimum as a resident for most welfare benefits.

Financial Implications

49. This paper has no financial implications.

Legislative Implications

50. The Immigration (COVID-19 Response) Amendment Act 2020 added eight time-limited powers that together are aimed at enabling the Government to better respond to the COVID-19 emergency situation. This paper discusses those powers.

Regulatory Impact Analysis

51. As this paper has no additional legislative or regulatory implications, a Regulatory Impact Analysis has not been provided with this paper.

Human Rights

52. There are no immediate human rights implications under the Bill of Rights Act 1990 or the Human Rights Act 1993.

Consultation

53. This paper has been prepared by the Ministry of Business, Innovation and Employment. The Treasury and the Department of the Prime Minister and Cabinet have been informed.

Recommendations

54. The Minister of Immigration recommends that Cabinet:

1. **note** that on 16 April 2020, Ministers with Power to Act on COVID-19 matters agreed to grant the Minister of Immigration the power to impose, vary or cancel conditions of visas for classes of temporary entry class visa holders, by special direction;
2. **note** that on 29 April 2020, Ministers agreed to amend the decision referred to above to enable the Minister of Immigration, under the policy framework to be agreed by Cabinet, to extend the expiry dates of visas for classes of temporary entry class visa holders

only, to cover the expiry dates of conditions for holders of resident class visas that have conditions [DEV-20-MIN-0060];

3. **note** that the Immigration (COVID-19 Response) Amendment Act 2020 (the Amendment Act) added eight time-limited powers which together are aimed at enabling the Government to better respond to the COVID-19 emergency situation;
4. **note** that
 - 4.1. Immigration New Zealand staff have an existing delegated authority to vary conditions on resident visas but this must be exercised on a case by case basis;
 - 4.2. the numbers of people who may be affected by COVID-19-related factors, coupled with the current reduced capacity of Immigration New Zealand, mean that individual decisions on applications for variations of resident conditions are unlikely to be able to be made in a timely fashion;
5. **note** that one of the powers, which can only be exercised by the Minister of Immigration, will enable the Minister to vary (including to extend) or cancel conditions for classes of resident class visa holder;
6. **note** that, while a decision as to whether to grant a special direction is in the absolute discretion of the Minister of Immigration, the Minister intends to refer to principles or a framework, discussed with Cabinet colleagues, as a guide when making decisions on varying or cancelling conditions for classes of resident class visa holders;
7. **note** that in considering whether to use the power to amend (i.e. vary, such as extend, or cancel) the visa conditions of a class of resident visa holders via special direction, the Minister of Immigration intends to take a variety of factors into account, and that these could include:
 - 7.1. assessment of the ability to travel to and enter New Zealand
 - 7.2. assessment of the magnitude of the numbers of people involved and whether a 'class' or group approach is warranted against and individual, case-by-case assessment
 - 7.3. assessment of characteristics and the visas held by members of potential classes or groups of residents
 - 7.4. assessment of employment and economic trends in New Zealand
 - 7.5. having regard to current Government policy.
8. **note** that it is important to manage legal risks which could arise if the Courts considered that the Minister's discretion had been undermined or unlawfully constrained;
9. **note** that special directions employed to exercise this power must be published and presented to the House and will be disallowable instruments; and

In Confidence

10. **note** that any special directions employed to exercise this power would only apply to people who have already been granted residence in New Zealand, and would not confer on them additional rights.

Authorised for lodgement

Hon Iain Lees-Galloway
Minister of Immigration



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Immigration (COVID-19 Response) Amendment Act 2020: Powers to Amend Resident Visa Conditions

Portfolio Immigration

On 15 June 2020, Cabinet:

- 1 **noted** that on 16 April 2020, Ministers with Power to Act on COVID-19 matters agreed to grant the Minister of Immigration the power to impose, vary or cancel conditions of visas for classes of temporary entry class visa holders, by special direction;
- 2 **noted** that on 29 April 2020, Ministers agreed to amend the decision referred to above to enable the Minister of Immigration, under the policy framework to be agreed by Cabinet, to extend the expiry dates of visas for classes of temporary entry class visa holders only, to cover the expiry dates of conditions for holders of resident class visas that have conditions [DEV-20-MIN-0060];
- 3 **noted** that the Immigration (COVID-19 Response) Amendment Act 2020 added eight time-limited powers, which together are aimed at enabling the government to better respond to the COVID-19 emergency situation;
- 4 **noted** that:
 - 4.1 Immigration New Zealand staff have an existing delegated authority to vary conditions on resident visas, but this must be exercised on a case by case basis;
 - 4.2 the numbers of people who may be affected by COVID-19-related factors, coupled with the current reduced capacity of Immigration New Zealand, mean that individual decisions on applications for variations of resident conditions are unlikely to be able to be made in a timely fashion;
- 5 **noted** that one of the powers, which can only be exercised by the Minister of Immigration, will enable the Minister to vary (including to extend) or cancel conditions for classes of resident class visa holder;
- 6 **noted** that, while a decision as to whether to grant a special direction is in the absolute discretion of the Minister of Immigration, the Minister intends to refer to principles or a framework, discussed with Cabinet colleagues, as a guide when making decisions on varying or cancelling conditions for classes of resident class visa holders;

- 7 **noted** that in considering whether to use the power to amend (i.e. vary, such as extend, or cancel) the visa conditions of a class of resident visa holders via special direction, the Minister of Immigration intends to take a variety of factors into account, and that these could include:
- 7.1 assessment of the ability to travel to and enter New Zealand;
 - 7.2 assessment of the magnitude of the numbers of people involved and whether a ‘class’ or group approach is warranted against an individual, case-by-case assessment;
 - 7.3 assessment of characteristics and the visas held by members of potential classes or groups of residents;
 - 7.4 assessment of employment and economic trends in New Zealand;
 - 7.5 having regard to current government policy;
- 8 **noted** that it is important to manage legal risks, which could arise if the Courts considered that the Minister’s discretion had been undermined or unlawfully constrained;
- 9 **noted** that special directions employed to exercise this power must be published and presented to the House, and will be disallowable instruments;
- 10 **noted** that any special directions employed to exercise this power would only apply to people who have already been granted residence in New Zealand, and would not confer on them additional rights.

Michael Webster
Secretary of the Cabinet