



BRIEFING

Delegation of Ministerial powers – Instruments of Delegation

Date:	5 June 2020	Priority:	High
Security classification:	In Confidence	Tracking number:	BR3403 19-20

Action sought

	Action sought	Deadline
Hon Iain Lees-Galloway Minister of Immigration	Agree to sign the attached Instruments of Delegation.	12 June 2020
Hon Poto Williams Associate Minister of Immigration	For your information	N/A

Contact for telephone discussion (if required)

Name	Position	Telephone	1st contact
Stephen Dunstan	General Manager, Enablement	04 896 5460	9(2)(a)
Alejandra Mercado	Manager, Operational Policy	04 896 5196	9(2)(a) ✓

The following departments/agencies have been consulted

<input type="checkbox"/> Treasury	<input type="checkbox"/> MoJ	<input type="checkbox"/> NZTE	<input type="checkbox"/> MSD	<input type="checkbox"/> TEC	<input type="checkbox"/> MoE
<input type="checkbox"/> MFAT	<input type="checkbox"/> MPI	<input type="checkbox"/> MfE	<input type="checkbox"/> DIA	<input type="checkbox"/> TPK	<input type="checkbox"/> MoH
		<input type="checkbox"/> Other:	N/A		

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments:

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Date:	5 June 2020	Priority:	High
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Purpose

This paper seeks your agreement to delegate the following ministerial decision-making powers under section 380 of the Immigration Act 2009 (the Act), by signing the attached Instruments of Delegation, which would:

- Delegate to Delegated Decision Makers (DDMs) the powers to:
 - grant a visa in the absence of an application to a temporary entry class visa holder or to someone offshore.
 - determine that a residence class visa holder's circumstances are such that they are liable for deportation, with respect to non-automatic deportation liability cases.
- Delegate to immigration officers the powers to:
 - waive, in an any individual case, the requirement to hold a transit visa
 - suspend, in an any individual case, a transit visa waiver for whom that waiver would normally apply as per regulations
 - grant a permanent resident visa (PRV) as an exception to instructions, but only in cases where the individual has previously held a resident visa

Recommended action

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

- a **Note** that the recent enactment of the Immigration (COVID-19 Response) Amendment Act 2020 (the Amendment Act) introduced a number of new decision making powers, two of which you are able to delegate to immigration officials, and which MBIE believes are appropriate to be delegated.

Noted

- b **Note** that MBIE officials have further identified two areas where your current instruments of delegation require clarification, namely with respect to the grant of certain residence class visas and to the determination powers of deportation liability.

Noted

- c **Agree** to and sign the attached Instrument of Delegation at Appendix 1, giving DDMs the powers to grant a visa in the absence of an application, and to determine the circumstances of a residence class visa holder are such that the person is liable for deportation.

Agree / Discuss

- d **Agree** to and sign the attached Instrument of Delegation at Appendix 2, giving immigration officers powers related to transit visas and PRVs.

Agree / Discuss



Stephen Dunstan
**General Manager,
Enablement Branch**
Ministry of Business, Innovation and
Employment

5 / June / 2020

Hon Iain Lees-Galloway
Minister of Immigration

..... / /

Amendment Act powers

1. On 16 May 2020, the Immigration (COVID-19 Response) Amendment Act (Amendment Act) came into force. The Act contains a number of powers which are intended to enable the Government to respond flexibly and efficiently to the effects of COVID-19 on migrants and the immigration system.
2. Most of the powers introduced by the Amendment Act are not able to be delegated, as these are class special direction powers which could affect a potentially large cohort of people. However, several of the powers do not fall under this category and so could be delegated to immigration officials:
 - a. the power to grant a visa in the absence of an application to an onshore temporary entry class visa holder or to someone offshore
 - b. waive, in an any individual case, the requirement to hold a transit visa
 - c. suspend, in an any individual case, a transit visa waiver for whom that waiver would normally apply as per regulations.
3. It is proposed that the power specified in paragraph 2a, provided in section 61A of the Act (s61A), be given to Delegated Decision Makers (DDMs) as they are accustomed to deciding requests under the parallel section 61 of the Act. As per usual practice, Immigration Resolutions would liaise with the Private Secretaries of your and the Associate Minister's office, and with DDMs to manage individual requests (whether made explicitly under s61A or not). It is noted, however, that the primary purpose of this provision is to allow for own-volition decisions where a potential applicant is practically unable to submit an application (as was the case for multiple tourists injured in last year's Whakaari/White Island eruption), and so it is envisaged that a very high proportion of direct requests to Ministers would not be considered.
4. It is proposed that the transit visa provisions described in paragraphs 2b and 2c, provided under section 86(4A) of the Act, be delegated to immigration officers who are included in Schedules 3 and 4¹ of your current Instrument of Delegation. This assignment would line up with the current delegations with respect to waiving the requirement for a (non-transit) visa or suspending a (non-transit) visa waiver as the case may be (section 69(2) of the Act). The waiver power will facilitate travel where, for example, individuals who have humanitarian reasons for transiting via New Zealand to return home, and where any health risks are mitigated. On the other hand, the suspension power can be used where the health risk of allowing a transit passenger is not sufficiently mitigated.

Clarifications of existing delegations

5. In November 2014, the previous Minister delegated the power to grant a permanent resident visa (PRV) as an exception to residence instructions.² He delegated this power to immigration officers holding the position of immigration manager or above. The intent was for this power to be used only with respect to those who hold or have held resident visas, and not also with respect to those who are eligible for PRVs directly (such as partners of New Zealand citizens who have been residing outside of New Zealand, and those accepted under

¹ To be clear, the transit visa power described in paragraph 2b would be delegated to an immigration officer with Schedule 4 delegations, while the power described in paragraph 2c would be delegated to an immigration officer with Schedule 3 delegations.

² You have since confirmed this delegation in the Instruments of Delegation you have signed.

the Refugee Quota).³ It is proposed that these delegations be clarified to ensure that such 'direct PRVs' are not granted as an exception⁴, except if done by the Minister or a DDM.

6. In December 2019, you delegated to DDMs the power to cancel or suspend a residence class visa holder's liability for deportation, in the cases where such liability does not arise automatically. An additional delegation is recommended to make explicit, rather than being implicit in the delegations currently, that they have the power to determine that a person's circumstances (in non-automatic cases) do mean that they are liable for deportation.

Notes

7. Irrespective of any delegation you authorise in the revised Instruments below, as Minister of Immigration, you retain the ability to make decisions in any particular case that may arise.
8. Proposed additions to the Instruments of Delegation are highlighted for ease of reference. Highlighting will not appear in the published versions. Deletions have not been highlighted.

³ The policy rationale of this delegation (as described in Briefing 0577 14-15) was that immigration officers under the former Immigration Act had the ability to issue indefinite returning resident's visa (IRRVs) as an exception to instructions. Under the former Act, IRRVs (the closest equivalent to an IRRV in the current Act is a PRV) could only be issued to someone already holding residence (i.e. there was no category by which someone could obtain an IRRV directly). It was therefore an oversight in 2014 to not clarify in the delegation itself the same prerequisite that the applicant should have held residence already.

⁴ To Operational Policy's knowledge, no such 'direct PRVs' have been granted as an exception by a Schedule 2 officer to date.

Appendix 1 – Delegation of Powers: Minister of Immigration to Delegated Decision Makers of the Ministry of Business, Innovation and Employment

Delegation of Powers: Minister of Immigration to Delegated Decision Makers of the Ministry of Business, Innovation and Employment – Immigration New Zealand

PURSUANT to section 380 of the Immigration Act 2009 (the Act) and effective from 22 June 2020 I, Iain Lees-Galloway, Minister of Immigration, hereby:

1. REVOKE the Instrument of Delegation dated 23rd day of December 2019 previously made under that section with the title *Delegation of Powers to Delegated Decision Makers of the Ministry of Business, Innovation and Employment – Immigration New Zealand*;
2. DELEGATE the powers in the Act that are specified below to the immigration officers specified below (known as Delegated Decision Makers (“DDMs”));
3. DELEGATE to every immigration officer the power to take the practical steps necessary under that Act to implement a decision taken by a DDM pursuant to this Instrument. Any person who exercises any power pursuant to this Instrument shall do so in accordance with
 - a. any applicable immigration instructions (s22 of the Act); and
 - b. any applicable general instructions to immigration officers from the chief executive (s26 (4) of the Act).
4. For the avoidance of doubt, this Instrument is additional to, and does not revoke, any other Instrument aside from that revoked by paragraph 1 of this Instrument.

Dated at Wellington this ____ day of _____ 2020

Iain Lees-Galloway
Minister of Immigration

Specified Delegated Decision Makers

Alejandra Mercado
Michael Carley
Steve Cantlon
Elizabeth Cantrick
Katherine Macleod
Nicola Scotland
Gordon Barlow

Additional Powers Delegated:

1. All those powers set out in Schedules 2, 3 and 4 of the Instrument of Delegation named *Delegation of Powers: Minister of Immigration to Ministry of Business, Innovation and Employment – Immigration New Zealand* which I signed and becomes effective on 5 June 2020;
2. On granting a resident visa as an exception to residence instructions, the power under s50(1) to impose conditions in addition to those specified in the applicable residence instructions (if any); or to vary or waive conditions that would otherwise apply to a visa of that type;
3. Following the grant of a resident visa, the power under s50(2) to, by special direction, impose further conditions whether or not the conditions are specified in the applicable residence instructions (if any); or vary or cancel conditions that would otherwise apply to the visa or were imposed under s50(1);

4. The power under s61A(1) to, by special direction, grant a visa of any type to a person who is outside New Zealand or is in New Zealand and holds a temporary entry class visa.
5. The power under s71(5) to grant a residence class visa, as a matter of absolute discretion, to a person to whom s71(4) of the Act applies;
6. The power under s72(2) to give a special direction allowing a residence application received by an immigration officer in the first instance to be considered by the Minister;
7. The power under s72(3) to grant a residence class visa as an exception to residence instructions;
8. The power under s94(4) to, by special direction, issue an invitation to apply for a visa to a person whether or not the person has expressed his or her interest in the manner required by the Act or immigration instructions;
9. The power to determine that a residence class visa holder is liable for deportation under ss156(1)(b), 158(1)(b), 159, or 160;
10. The power under s172(1) to, as a matter of absolute discretion, cancel a person's liability for deportation where deportation liability arises under ss156(1), 158(1), 159, 160(1), 161, or 162;
11. The power under s172 (2) to, as a matter of absolute discretion, suspend a residence class visa holder's liability for deportation where deportation liability arises under ss156(1), 158(1), 159, 160(1), 161, or 162. Any suspension of liability may be set for a period not exceeding 5 years, and may be made subject to any conditions which are to be stated in the written notice of suspension.
12. The power under s172(3) to reactivate a person's liability for deportation if the person fails to comply with the conditions imposed by a DDM under s172 (2) (b).
13. The power under s174(2) to determine that a person has met the conditions imposed by the Minister under s172(2) for the period of the suspension, to cancel that person's liability for deportation, and notify the person and the Tribunal of that fact.
14. The power under s182 to reduce or remove a period of prohibition on entry for those who have a permanent prohibition on re-entry to New Zealand under ss179 due to being deported from New Zealand following deportation liability arising under ss156, 158, 160, 161 and 162.
15. The power under s213 (5) to determine that a person has met any conditions imposed by the Tribunal under s212 (1) for the duration of the suspension, cancel the person's liability for deportation, and notify the Tribunal accordingly.

Appendix 2 – Delegation of Powers to Ministry of Business, Innovation and Employment - Immigration New Zealand

Delegation of Powers: Minister of Immigration to Ministry of Business, Innovation and Employment – Immigration New Zealand

PURSUANT to section 380 of the Immigration Act 2009 (the Act) and effective from 22 June 2020, I Iain Lees-Galloway, Minister of Immigration:

1. REVOKE the Instrument of Delegation dated 23rd day of December 2019 previously made under that section;
2. DELEGATE, to each immigration officer who is the holder (or is acting as the holder) from time to time of any office or position specified in each of the Schedules to this Instrument, and is suitably trained and qualified, the powers under the Immigration Act 2009 specified in relation to that office or position in the relevant Schedule, but subject to any conditions listed in those Schedules; and
3. DELEGATE to every immigration officer the power to take the practical steps necessary under that Act to implement a decision taken by another immigration officer pursuant to this Instrument of Delegation. Any person who exercises any power pursuant to this Instrument of Delegation shall do so in accordance with the Government policy and Departmental instructions that are current at the time, as set out from time to time in the Immigration New Zealand Operational Manual and circular instructions on Immigration.

Dated at Wellington this ____ day of _____ 2020

Iain Francis Lees-Galloway
Minister of Immigration

Schedule 1

Office or Position:

1. Chief Executive, Ministry of Business, Innovation and Employment
2. Deputy Chief Executive – Immigration New Zealand, Ministry of Business, Innovation and Employment

Powers Delegated:

1. All those powers set out in Schedules 2, 3 and 4 of this Instrument of Delegation without limitation or subject to any conditions;
2. Specifying an international organisation under s4, by notice in the Gazette, as an organisation whose travel documents will be accepted as certificates of identity.

Schedule 2

Office or Position:

1. 3rd Tier Manager - Immigration New Zealand, Ministry of Business, Innovation and Employment
2. 4th Tier Manager - Immigration New Zealand, Ministry of Business, Innovation and Employment
3. 5th Tier Manager - Immigration New Zealand, Ministry of Business, Innovation and Employment
4. 6th Tier Manager - Immigration New Zealand, Ministry of Business, Innovation and Employment
5. Immigration Manager - Immigration New Zealand, Ministry of Business, Innovation and Employment

Powers Delegated:

1. All those powers set out in Schedules 3 and 4 of this Instrument of Delegation;
2. Giving a special direction under s17(1)(a) of the Act authorising a residence class visa to be granted to a person to whom s15 or s16 applies;
3. The power under s79(5) of the Act to grant a temporary visa to a person prohibited from applying for a temporary visa under s79(4);
4. The power under s180(3) of the Act to reduce or waive any debt due by a person under s180(1) (this power is delegated to managers in the Compliance, Risk and Intelligence Services Branch only);
5. Providing by special direction under s395(2) of the Act for an exemption from or refund of any prescribed fee or charge in whole or in part;
6. Providing by special direction under s396(9) of the Act for an exemption from or refund of any bond, in whole or in part;
7. The power under s398(1) and (3) of the Act to provide funds for the costs of deportation or repatriation from New Zealand (this power is delegated to managers in the Compliance, Risk and Intelligence Services Branch only);
8. Giving a special direction under s412(2) of the Act, relating to existing applications for visas and permits, that s412(1) not apply;
9. The power conferred by regulation 26(5) (where applicable pursuant to s399(8) of the Act and pursuant to the transitional provision of Schedule 1AA of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive (by way of special direction) the requirement to pay the migrant levy;

10. The power conferred by regulation 34(1)(a) and (f) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive, by special direction:
 - a. one or more of the requirements for applying for a visa (whether at an immigration control area or otherwise);
 - b. any matter relating to an endorsement of New Zealand citizenship in a New Zealand citizen's foreign passport;
11. The power to give a special direction under s51(3) of the Act to vary the conditions of a resident visa, as an exception to instructions;
12. The power under s72(3) of the Act to grant a second or subsequent resident visa as an exception to instructions;
13. The power under s72(3) of the Act to grant a permanent resident visa as an exception to instructions, to a person who has held a resident visa in New Zealand;
14. The power under s399(3A) of the Act to provide by special direction for an exemption from or refund of any immigration levy, in whole or in part;
15. The power under s399A(4) of the Act to provide by special direction for an exemption from or refund of the international visitor conservation and tourism levy, in whole or in part;
16. The power conferred by regulation 26AAC of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to accept cash payment of prescribed fees by special direction.

Schedule 3

Office or Position:

1. Immigration officer, technical advisor
2. Immigration officer

Powers Delegated:

1. Any of the powers set out below which have been assigned to an individual by the Chief Executive;
2. Giving a special direction under s17(1)(a) of the Act authorising:
 - a. a temporary entry class visa and/or entry permission; or
 - b. a transit visa
 to be granted to a person to whom s15 or s16 of the Act applies;
3. The power under s50(3) of the Act to do either of the things in subsection (2)(b), that is to vary or cancel conditions on a resident visa, by agreement with the visa holder;
4. The power under s61 of the Act to grant or refuse a visa of any type to a person who is unlawfully in New Zealand and is not a person in respect of whom a deportation order is in force;
5. The power under s69(2)(d) of the Act to suspend, in any individual case, a waiver of the requirement to hold a visa permitting travel to New Zealand;
6. The power under s86(4A)(b) of the Act to suspend, in any individual case, a waiver (made by regulations) of the requirement to hold a transit visa.
7. The power conferred by regulation 23(2) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to require, by special direction, that regulations apply to applications for visas not otherwise provided on the approved form;
8. The power conferred by regulation 34(1)(a) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive, by special direction, the requirements in regulation 5(2)(d)(iii), to the extent that it relates to immigration instruction requirements to produce a police or similar certificate;

9. The power conferred by regulation 34(1)(a) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive, by special direction, requirements specified in regulation 5(2) in relation to residence class visa applications lodged:

- a. under the Refugee Family Support category;
- b. under the victims of family violence category;
- c. by persons recognised as refugees and protected persons in New Zealand.

This delegation only applies to the extent specified by immigration instructions;

10. The power conferred by regulation 34(1)(a) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive, by special direction, requirements specified in regulation 5(2) in relation to residence class visa applications lodged under the Skilled Migrant Category;

11. The power conferred by regulation 34(1)(a) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive, by special direction, the requirements in regulation 10(2)(e) for particular documents, information and /or evidence to be tendered with the approved application form, in respect of applications made for temporary entry class visas;

12. The power conferred by regulation 34(1)(a) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive, by special direction, requirements specified in regulations 10(2), in relation to temporary entry class visa applications lodged:

- a. under Special work visas for victims of family violence category;
- b. by persons recognised as refugees and protected persons in New Zealand.

This delegation only applies to the extent specified by immigration instructions;

13. The power conferred by regulation 34(1)(b), (c) and (d) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive, by special direction, one or more of the requirements for:

- a. applying for a second or subsequent resident visa;
- b. varying conditions of travel for a resident visa;
- c. notifying an expression of interest in applying for a residence class visa.

Schedule 4

Office or Position:

1. Immigration officer at an immigration control area, as defined under s382, or any other port of entry
2. Immigration officer who holds the position of compliance officer

Powers Delegated:

1. Any of the powers set out below which have been assigned to an individual by the Chief Executive;
2. The power to make decisions under s16 of the Act that certain persons are not entitled to the grant of a visa and/or entry permission;
3. Giving a special direction under s17(1)(a) of the Act authorising a residence class visa to be granted to a person who applies for a residence class visa on arrival, and to whom s15 or s16 applies;
4. The power under s69(2)(c) of the Act to waive, in any individual case, the requirement to hold a visa permitting travel to New Zealand;
5. The power under s86(4A)(a) of the Act to waive, in any individual case, the requirement to hold a transit visa.
6. The power to give a special direction under s101(4) of the Act in relation to the responsibilities of carriers and persons in charge of craft en route to or arriving in New Zealand;

7. The power to give a special direction under s103(1) of the Act in relation to persons arriving in New Zealand;
8. The power to give a special direction under s108(4)(b) or (5)(b) of the Act to impose, vary or cancel the conditions of a resident visa granted outside New Zealand;
9. The power to give a special direction under s119(1) of the Act in relation to persons leaving New Zealand.
10. Determining under s156(1)(b) of the Act that a person holds a temporary entry class visa under a false identity;
11. Determining under s157(1) of the Act that there is sufficient reason to deport a temporary entry class visa holder;
12. Determining under s157(3) of the Act that a person is an excluded person for the purpose of section 157(2);
13. The power under s172 of the Act , with due regard to submissions (if applicable), to cancel liability for deportation for a temporary entry class visa holder;
14. The power under s182(1) of the Act to reduce or remove a non-permanent period of prohibition on entry in relation to a person in regards to their application for visa or entry permission;
15. The power conferred by regulation 34(1)(a), (b) and (e) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive, by special direction, one or more of the requirements for applying for:
 - a. a visa or for entry permission, to the extent specified by immigration instructions;
 - b. a second or subsequent resident visa at an immigration control area;
16. The power conferred by regulation 34(1)(da) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive, by special direction, one or more of the requirements for requesting or holding an ETA.