



## BRIEFING

### COVID-19 – upcoming expiry of transit-related Special Directions

<b>Date:</b>	5 June 2020	<b>Priority:</b>	Medium
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	3355 19-20

Action sought		
	Action sought	Deadline
Hon Iain Lees-Galloway <b>Minister of Immigration</b>	<b>Note</b> that the majority of the Special Directions you have made for transit travel will expire on 19 June, and the regulations-based transit regime will resume  <b>Note</b> that brief talking points are attached in the event that the transit regime is raised in discussions	8 June 2020
Hon Poto Williams <b>Associate Minister of Immigration</b>	For information	

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Siân Roguski	Manager, Immigration Policy	04 901 1572	s 9(2)(a)	✓
Christine Hyndman	Principal Policy Advisor	04 901 8574	s 9(2)(a)	

The following departments/agencies have been consulted

Minister's office to complete:

☐ Approved

☐ Declined

☐ Noted

☐ Needs change

☐ Seen

☐ Overtaken by Events

☐ See Minister's Notes

☐ Withdrawn

Comments



# BRIEFING

## COVID-19 – upcoming expiry of transit-related Special Directions

<b>Date:</b>	5 June 2020	<b>Priority:</b>	High
<b>Security classification:</b>	In Confidence	<b>Tracking number:</b>	3355 19-20

### Purpose

This briefing provides background on the current and upcoming status of New Zealand's air transit settings, noting that

- the Special Direction you made on 19 March 2020 will expire on 20 June 2020 and cannot be extended
- the transit visa waiver regime will be reinstated at that point, and
- officials consider that this will have few practical implications, but will monitor the outcomes and report back if change (such as new Special Directions or regulation change) appear warranted.

### Recommended action

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

a **Note** that:

- i. on Thursday 19 March 2020 you made a Special Direction under section 86(4) of the Immigration Act 2009 (the Act) requiring all transit passengers (excluding New Zealanders and residence class visa holders) to apply for a transit visa before travel
- ii. that Special Direction expires on Friday 19 June, and
- iii. section 86(6) of the Act provides that Special Directions made by the Minister of Immigration in relation to class transit visa waivers cannot be extended

*Noted*

- b **Note** that, on 25 March 2020, the COVID-19 Ministerial Group agreed to close the borders to incoming transit passengers, with exemptions made in the case where passengers departing from New Zealand are disembarking at an overseas port where there is a Government-to-Government assurance that those passengers will be accepted as part of repatriation

*Noted*

- c **Note** that you have made a series of Special Directions which, notwithstanding the decision in a. above, support the repatriation of stranded people as allowed for in b. above, through removing the requirement that they hold a transit visa before travel, reflecting that
- i. transit visa applications cannot be made online
  - ii. Immigration New Zealand (INZ) offshore offices and Visa Application Centres (VACs) are closed
  - iii. postal services are severely disrupted, meaning applications may not reliably be able to get to New Zealand, while

iv. most transits to support the repatriation of stranded people are time critical

*Noted*

d **Note** that

- i. seven of those Special Directions are active and reflect the current 38 Government-to-Government assurances intended to manage the risk of passengers becoming stranded and health risks to New Zealand
- ii. four of those assurances (with China, North Macedonia, South Africa and Fiji) relate to nationalities which are not transit visa waiver
- iii. with the exception of Fiji, these Special Directions enabling some transit travel also expire on Friday 19 June and cannot legally be extended

*Noted*

e **Note** that once the Special Directions in paragraphs a. and c. expire, the transit visa regime set out in the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 (the Regulations) will be reinstated

*Noted*

f **Note** that 83 nationalities (including all Pacific citizens except Fijian citizens) and a range of classes of traveller will be visa-waiver to transit Auckland airport, but that this will have few practical implications, as

- i. there are few flights
- ii. the risk of passengers stranding has substantially reduced,
- iii. transit passengers may not be uplifted unless they have a confirmed flight out of New Zealand within 24 hours, and
- iv. in most cases, transit passengers must hold an ETA or transit ETA, which are applied for online and are not subject to physical office constraints

*Noted*

g **Direct** officials to monitor the outcomes following 20 June 2020, and to report back if change to settings (such as new Special Directions or regulation change) appear warranted

*Agree / disagree / discuss*

h **Note** that talking points are attached, in the event that the transit regime is raised in discussions.

*Noted*



Siân Roguski  
**Manager, Immigration Policy**  
Labour, Science and Enterprise, MBIE

5 / 06 / 2020

Hon Iain Lees-Galloway  
**Minister of Immigration**

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## Background

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1. Prior to the COVID-19 outbreak, New Zealand facilitated around 10,000 air travellers per week transiting Auckland airport. Transit passengers present less direct infection risk to the community than people who land in New Zealand, but social distancing can be impossible in crowds and foreign transit passengers will mingle with in- and outbound New Zealand-based travellers. In addition, New Zealand faced the issue of large numbers of “stranded” transit passengers in February and March 2020, as countries’ borders were suddenly closed and airline flights were severely disrupted.
2. As part of the management of the COVID-19 response, the Government therefore closed the border to people both seeking to enter and to transit New Zealand. Policy decisions were operationalised through changes to INZ decision making criteria, and in some cases through you exercising your discretion to make Special Directions.
3. Classes of people may be required to hold a transit visa, or be waived from the obligation to hold a transit visa, through regulations (whose scope is spelt out at section 86(3) of the Immigration Act 2009 (the Act)) or through Special Directions made under section 86(4) of the Act. Those Special Directions are an exercise of your absolute discretion.
4. The Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 (the Regulations) establish that a transit period has a maximum duration of 24 hours, and list the classes of person who are waived the requirement to hold a transit visa. These include Australian citizens and permanent residents, the nationals of all visa waiver economies, citizens of 33 other countries, and diplomats accredited to New Zealand.
5. Section 86(6) of the Act specifies that any Special Directions made under section 86(4) have a maximum validity of three months, and section 86(7) establishes that any Special Direction cannot be effectively continued in force by the making of a further Special Direction to the same or similar effect.
6. The policy intention was that long term changes would be enforced through changes to regulations. While the Immigration Act 2009 does not envisage transit visa requirements relating to health-related issues, or to reasons for travel (such as repatriation), regulations can take factors such as departure countries and destinations into account.

## A number of border decisions with transit implications have been made in response to COVID-19

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7. Cabinet and the former COVID-19 Ministerial Group have made a series of border-related decisions, including transit-related decisions, including:
  - a) on 25 March 2020, the COVID-19 Ministerial Group agreed to close the borders to incoming transit passengers, with exemptions made in the case where passengers departing from New Zealand are disembarking at an overseas port where there is a Government-to-Government assurance that those passengers will be accepted as part of repatriation
  - b) on 30 March 2020, Cabinet agreed that those subject to Category 1A border restrictions, but who are eligible to travel to Australia as their final destination, are able to transit via New Zealand as long as that transit remains airside and does not allow entry into New Zealand [CAB-20-MIN-0142]
  - c) on 6 April 2020, Cabinet agreed that transit through New Zealand should continue to be allowed where there is a Government-to-Government assurance to support repatriation of stranded people, where the following conditions are met:
    - i. passengers remain airside and do not exceed 10 hours in transit

- ii. health requirements have been met; and
    - iii. there is a formally documented Government-to-Government undertaking that all passengers will be either accepted at the port of disembarkation and / or allowed to transit that port in order to travel onwards to a third country [CAB-20-MIN-0156]
  - d) on 20 April 2020, Cabinet agreed that transit through New Zealand should continue to be allowed where there is a Government-to-Government assurance, to the satisfaction of the Minister of Foreign Affairs (or his delegated representative), to support repatriation of stranded people, where the following conditions or are met:
    - i. passengers remain airside and do not exceed 24 hours in transit
    - ii. health requirements have been met; and
    - iii. all passengers will be either accepted at the port of disembarkation and / or allowed to transit that port in order to travel onwards to a third country [CAB-20-MIN-0176].
8. You have supported those decisions through the exercise of your discretion. Specifically, you have made a number of Special Directions to both close the border to ordinary transit passengers and to facilitate the repatriation of people who were outside their country of nationality as borders closed. Notably:
- a) on Thursday 19 March 2020 you made a Special Direction requiring all transit passengers (excluding New Zealanders and residence class visa holders) to apply for a transit visa before travel. That Special Direction expires on Friday 19 June and cannot legally be extended
  - b) since then you have made a number of further Special Directions with the effect of enabling some transit travel, primarily focused on repatriation, and relating in some cases to facilitating individual flights. Seven are active and reflect current Government-to-Government assurances with 39 countries (see Annex one). Four of those assurances (with China, North Macedonia, South Africa and Fiji) relate to nationalities which are not transit visa waiver. With the exception of Fiji, these Special Directions enabling some transit travel also expire on Friday 19 June and cannot legally be extended. (Fiji's will last until September.)

**The exercise of your discretion has been required as transit visas cannot easily be issued at present**

9. The Special Directions have removed the requirement for transit passengers to hold transit visas before travel, reflecting that
- transit visa applications cannot be made online
  - Immigration New Zealand (INZ) offshore offices and Visa Application Centres (VACs) are closed (slowly re-opening in the Pacific over the next few months)
  - postal services are severely disrupted, meaning applications may not reliably be able to get to New Zealand, while
  - most transits to support the repatriation of stranded people are time critical

**Officials have considered the options available**

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10. It is not possible to continue the existing regime going forward. While regulations could be amended to continue the transit visa waiver suspension, the non-renewable nature of the

Special Directions means that bona fide transit passengers could not then be easily facilitated through the issuing of new Special Directions. As noted above, it is extremely difficult at present, and for the next few months at least, for people to apply for and be granted transit visas.

11. While the new Immigration (COVID-19 Response) Amendment Act 2020 provides the Minister with the (delegable) power to waive the requirement to hold a transit visa for individuals, we do not consider that this is practicable for all transit passengers (volumes of up to 45 people daily under current settings).

**Officials consider that the change will have few practical implications but will monitor the outcomes**

12. While a wide range of classes of traveller will now be technically visa-waiver to transit Auckland airport, we however consider that this will have few practical implications, as:
  - there are still relatively few flights
  - the risk of passengers stranding has substantially reduced (because airline schedules and countries' border settings have stabilised), and
  - transit passengers may not be uplifted unless they have a confirmed flight out of New Zealand within 24 hours to a country that will accept them. Border officers check this carefully before the passenger has boarded the plane to New Zealand.
13. It is likely that the support of the Ministry of Foreign Affairs and Trade will continue to be necessary in some cases, to give sufficient assurance that passengers will be able to complete their travel and be accepted by their ultimate destination.
14. We note that in most cases (excluding Australian citizens), transit visa waiver passengers must hold an Electronic Travel Authority (ETA) or transit ETA before travel. This enables some scrutiny by Immigration New Zealand. (ETAs are applied for online and are not subject to physical office constraints.)
15. Some intending travellers will be transit visa-required nationalities. Give the difficulties in applying for transit visas, at this stage such passengers are likely to be facilitated individually by Border staff, generally using the new power to waive the requirement to hold a visa, with support from the Ministry of Foreign Affairs and Trade (in terms of assurance of travel) if appropriate.
16. s 9(2)(f)(iv) [REDACTED]  
[REDACTED] We are also developing updated information for the travel industry and intending transit passengers, which will be published shortly.
17. Officials will monitor the ongoing situation. If it appears that the settings are not working (passengers are being stranded, there are unnecessary barriers to the safe movement of people through airports, or a trans-Tasman or other safe zone proposal necessitates change) we will report back to you.
18. s 9(2)(f)(iv) [REDACTED]  
[REDACTED]
19. s 9(2)(f)(iv) [REDACTED]  
[REDACTED]

20. We are developing updated information for the travel industry and intending transit passengers about the changes and publish it before they come into effect.

## **Next steps**

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21. The Prime Minister's Cabinet paper (to be considered on Monday 8 June 2020) on whether to move to Alert Level 1 notes the details of the reinstatement of the usual transit visa waiver regime (at a high level). Talking points are provided at Annex two to support any discussion on these matters.

## **Annexes**

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Annex one: Transit visa waiver countries and economies and countries which have received the benefit of Special Directions

Annex two: Suggested talking points



## Annex one: Transit visa waiver countries and economies and countries which have received the benefit of Special Directions

The table below sets out transit visa waiver countries and economies, and countries which have received the benefit of Special Directions.

Black font: Visitor visa waiver and transit visa waiver

Red font: Transit visa waiver but visitor visa required

Blue font: subject to a Special Direction and transit visa required

Green highlight, bold: subject to an active Special Direction until 19 June, except Fiji (4 September)

#	Country / economy	#	Country / economy	#	Country / economy
1	Australia	31	Liechtenstein	61	Vatican City
2	Andorra	32	Lithuania	62	Bahamas
3	<b>Argentina</b>	33	Luxembourg	63	Bermuda
4	<b>Austria</b>	34	Macau	64	Bolivia
5	Bahrain	35	<b>Malaysia</b>	65	Colombia
6	<b>Belgium</b>	36	Malta	66	Costa Rica
7	<b>Brazil</b>	37	Mauritius	67	<b>Ecuador</b>
8	Brunei	38	<b>Mexico</b>	68	Federated States of Micronesia
9	<b>Bulgaria</b>	39	Monaco	69	Indonesia
10	<b>Canada</b>	40	<b>Netherlands</b>	70	Kiribati
11	<b>Chile</b>	41	<b>Norway</b>	71	Nauru
12	<b>Croatia</b>	42	Oman	72	Palau
13	Cyprus	43	<b>Poland</b>	73	Panama
14	<b>Czech Republic</b>	44	Portugal	74	<b>Papua New Guinea</b>
15	<b>Denmark</b>	45	<b>Qatar</b>	75	Paraguay
16	Estonia	46	Romania	76	Peru
17	<b>Finland</b>	47	San Marino	77	<b>Philippines</b>
18	<b>France</b>	48	Saudi Arabia	78	Republic of Marshall Islands
19	<b>Germany</b>	49	Seychelles	79	Samoa
20	Greece	50	<b>Singapore</b>	80	<b>Solomon Islands</b>
21	Hong Kong	51	<b>Slovak Republic</b>	81	Thailand
22	Hungary	52	<b>Slovenia</b>	82	Tonga
23	Iceland	53	<b>Spain</b>	83	Tuvalu
24	Ireland	54	<b>Sweden</b>	84	Vanuatu
25	Israel	55	<b>Switzerland</b>	85	Venezuela
26	<b>Italy</b>	56	Taiwan	86	<b>China</b>
27	<b>Japan</b>	57	United Arab Emirates	87	<b>North Macedonia</b>
28	<b>Korea</b>	58	<b>United Kingdom</b>	88	<b>South Africa</b>
29	Kuwait	59	<b>USA</b>	89	<b>Fiji</b>
30	Latvia	60	<b>Uruguay</b>		

## **Annex two: Suggested talking points**

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The COVID-19 Ministerial Group agreed in late March to close the borders to incoming transit passengers, with exemptions made where passengers departing from New Zealand are disembarking subject to a Government-to-Government assurance that those passengers will be accepted as part of repatriation.

I have made a series of decisions to effect this. Firstly I made an initial Special Direction removing all transit visa waivers, meaning all foreign nationals seeking to transit Auckland airport (our only transit point) must apply for and be granted a visa first.

Secondly I have made Special Directions to support the repatriation of stranded people through removing the requirement that they hold a transit visa before travel.

This reflects that transit visa applications cannot be made online, but paper-based applications are not practical while most offshore Immigration New Zealand offices and Visa Application Centres are closed.

The Immigration Act 2009 establishes that Special Directions which relate to transit visas may be for a maximum of three months and cannot be extended.

The previous regulatory transit visa regime will therefore come back into effect from 20 June.

At that point eighty-three nationalities, and people transiting to or from Australia, will not require a transit visa as long as they have a confirmed flight out within 24 hours to a port which will accept them.

Officials consider that this will have few practical implications, as

- there are few flights,
- the risk of passengers stranding has substantially reduced because airline timetables and other countries' border settings have stabilised
- transit passengers may not be uplifted unless they have a confirmed flight out of New Zealand within 24 hours to a country that will accept them (this is a substantial barrier), and
- in most cases transit passengers must hold an Electronic Travel Authority (ETA) or transit ETA before travel, so Immigration New Zealand can already scrutinise them

My officials are continuing to work closely with Ministry of Foreign Affairs and Trade colleagues, including to seek assurances that onward travel is possible for individuals and groups, as appropriate. Officials from both agencies will monitor the situation closely, and I may seek Cabinet agreement to regulatory change if it appears necessary.

My officials are developing updated information for the travel industry and intending transit passengers which will be published shortly.