In Confidence

Office of the Minister of Transport
Office of the Minister for Economic Development
Office of the Minister of Immigration

Ad-hoc Cabinet Committee on COVID-19 Response

COVID-19: Request for exemption to temporary border restrictions for essential workers and proposal to delegate decision making to joint Ministers

Proposal

1 This paper seeks agreement to an exemption to COVID-19 temporary border restrictions to enable an essential worker in the aviation sector to enter New Zealand.

2 This paper also seeks approval to a delegate to joint Ministers future consideration of further requests for exemptions from temporary border restrictions for essential workers.

Relation to government priorities

3 This proposal supports New Zealand's management of the response to COVID-19.

Background

Cabinet has agreed high-level pa ameters for exemptions to the COVID-19 border restrictions

4 On 19 March 2020, Cabinet agreed to border restrictions preventing entry to New Zealand [CAB-20-MIN-0122 refers]. The following groups are not subject to the restrictions:

4.1 New Zealand citizens and residence class visa holders;

4.2 The partner, legal guardian or any dependent children travelling with a New Zealand citizen or residence class visa holder;

4.3 Australian citizens and permanent residence class visa holders ordinarily resident in New Zealand; and

4.4 People subject to regulation 25 or the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, which includes air and marine crew.

5 Cabinet also agreed high-level parameters for case-by-case exemptions to COVID-19 border restrictions, which include [CAB-20-MIN-0122 refers]:

5.1 Those who need to travel for humanitarian reasons;

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5.2 Essential health workers;

5.3 Citizens of Samoa and Tonga for essential travel to New Zealand;

5.4 Partners or dependents of a temporary work or student visa holder, and who normally live in New Zealand; and

5.5 Any other essential workers identified by the group of COVID-19 Ministers with Power to Act.

A request has been made for an exemption to the travel restrictions for an essential worker in the aviation sector

6 Officials have received a request to enable an essential worker in the aviation sector to enter New Zealand to provide critical oversight of Boeing aircraft safety issues.

7 The worker was on holiday in s 9(2)(a) when temporary border restrictions were introduced in New Zealand. The request includes an exemption for the wife and child of the worker, who are also in s 9(2)(a) .

8 This request is supported by the Ministry of Transport and the Ministry of Business, Innovation and Employment, as the worker is deemed to be critical to the provision of critical aviation services. The Ministry of Health also supports the request.

9 Details of the worker and his family are listed in Annex One.

The worker is critical to the safety and viability of the commercial aviation sector

10 The worker is an Airworthiness Engineer for the Civil Aviation Authority (CAA). He is responsible for the certification of aircraft and associated product.

11 He holds unique knowledge in the field of Boeing aircraft safety issues that is critical to the regulatory oversight of both Air New Zealand and Airwork (cargo/freight deliveries). This includes recent and ongoing safety interventions regarding aircraft defects and airworthiness. He is currently working on a design change that would enable Air New Zealand aircraft to carry freight in passenger compartments which would significantly add to freight transport capacity.

12 He provides specialised oversight of topics that only he has knowledge of within the CAA, including fatigue of transport aircraft structures, alternate means of compliance, crashworthiness, and Boeing structures. He is currently managing the end of lease arrangements and Boeing 777 upgrades for Air NZ which are crucial to their commercial revenue and operational viability.

13 He is also currently working on the approval of a design change supporting the emergency medical industry, which would be significantly expedited if he was in the country and able to access CAA systems and equipment. Any further

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delays to this work will delay the approval of changes to allow the transportation of a medical attendant on EMS helicopters.

14 This work is critical for the safety and viability of the commercial aviation sector and cannot be deferred for a significant length of time. Any deferral of this work will negatively impact the financial position of Air New Zealand significantly and would create risks to ability of critical freight transport operators to continue to operate safely. Due to his unique knowledge and experience, it is not possible to re-deploy workers already in New Zealand to undertake this work.

The worker and his family will be quarantined on arrival in New Zealand

15 On arrival in Auckland the worker and his family will be required to undergo quarantine or managed isolation in an approved facility for a minimum of 14 days. The CAA is coordinating domestic travel (under the essential worker criteria) from Auckland to Wellington for the family and transport to their residence in Wellington after the quarantine period.

16 All costs associated with the worker, including internat onal and domestic travel and quarantine will be met by the CAA as the sponsoring employer.

We also support an exemption for the family members of the worker

17 The worker and his family have resided in New Zealand since 2017 and this is now their home. They have a very young child (1 year old) and for these reasons the worker could not be reasonably expected to return to New Zealand without his wife and child accompanying him.

If approved, the worker and his family will be invited to apply for a variation of conditions that will enable them to enter New Zealand

18 If Ministers with Power to Act agree to the proposed exemption, the worker (and his family members if approved) will be invited to apply for a variation of the conditions of their existing temporary visas that will enable them to enter New Zealand.

We are seeking approval to a robust and streamlined process for consideration of further exemptions to border restrictions for essential workers

19 Further requests for exemptions are expected in the coming weeks, some of which may require urgent turnaround (e.g. in cases where critical infrastructure has failed and offshore expertise is required to remediate the issues). As such, we are seeking agreement to a streamlined process for further requests for exemptions from the border restrictions for essential workers that will ensure robust and consistent decision making across all requests under this exception.

20 The processes established under delegated decision making will be made in line with Cabinet's intent that exemptions will only be considered in exceptional circumstances and when robust processes are in place to manage the health risks associated with new international arrivals.

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Delegation of decisions is recommended to enable streamlined and robust decisions on further exemptions

21 The threshold for making exemptions to temporary border restrictions for essential workers should be high and reserved for exceptional cases where there is no other alternative. It is important that decisions are made consistently across different essential services and do not undermine the integrity of border restrictions and Alert Level settings.

22 In order to streamline the decision making process – while ensuring that any exemptions are subject to an appropriate level of scrutiny and checks to manage public health risks – we recommend delegating decisions on further exemptions for essential workers to the Minister of Economic Development and the relevant portfolio Minister. The Ministry of health will continue to be consulted on requests for exemptions.

23 Under this model, the Minister of Economic Development – as key the key Minister in regard to essential services for the economy – will provide a "moderation" function across requests and ensure consistency. Immigration New Zealand will continue to operationalise the decision in terms of ensuring the requisite visas are issued and entry permission is granted.

Advice on further requests for exemptions will consider a defined set of factors

24 To ensure consistency, advice to Ministers will be prepared jointly by the lead agency for the relevant essential service and the Ministry of Business, Innovation and Employment Essential Services work stream. This advice will need to include consideration of the following factors:

24.1 Why the workers are needed to ensure the continuity of an essential service;

24.2 Why it is not possible to re-deploy workers already in New Zealand (this could include time constraints or the specific nature of the work being done);

24.3 What is happening to any staff currently performing the role(s);

24.4 The length of the visa required and the reason for that length of visa; and

24.5 The requirement to undergo quarantine or managed isolation in an approved facility for a minimum of 14 days and whether appropriate domestic travel arrangements are in place.

Requests for exemptions that include family members

25 Requests for exemptions that include partners and/or dependents of essential workers will be considered on a case-by-case basis and will not be granted by default. Requests that include partners or dependents will need to specify the case for allowing them to enter.

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26 Matters that would be considered in allowing exemptions for family members would be:

26.1 The length of the time the worker is required for – we would only expect requests to include family members if the essential worker was expected to be in New Zealand for a significant period of time;

26.2 The number of family members an exemption is sought for – the starting point for consideration would be immediate family members – the partner and dependent children of the worker;

26.3 The long-term accommodation situation of the family – the worker and family may be returning to New Zealand to an established household in New Zealand (as is the case for the aviation worker discussed in this paper).

Requests for exemptions for a class of workers

27 To date, requests for exemptions have identified small numbers of individual workers. However, it is possible that Ministers may be asked to consider requests for classes of workers in a particular industry. We recommend that requests of this nature continue to be considered by the Ad-hoc Cabinet Committee on COVID-19 Response.

The Minister for Economic Development will report to Cabinet Committee on decisions made

28 To ensure that the Government is informed about the exemption decisions being made, we propose that the Minister for Economic Development, as the Minister with oversight of exemption decisions, reports to Cabinet Economic Development Committee on the decisions made on a three-month basis. The report will include details of the:

28.1 number of workers to be exempted and their countries of origin

28.2 names of relevant portfolio Ministers and portfolio areas

28.3 critical work to be completed that requires the exemptions.

Upcoming paper on framework for decisions on restrictions for maritime vessels

29 Officials have also advised that a number of exemptions are also being requested through the marine pathway – primarily by arriving small marine craft and research vessels, but also fishing vessels seeking to discharge fish in New Zealand.

30 A pending issue is the imminent 6-monthly change-over of crew on a number of large fishing vessels that operate continuously in New Zealand waters (scheduled for May 2020). The change-over date may be able to be extended but this would have an impact on the welfare of the crew already in New Zealand waters. There would be economic impacts if the vessels ceased to operate.

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31 To ensure that decision making on these exemptions reflects Cabinet's decisions on the temporary border restrictions, officials are developing advice and we expect to bring a paper to Cabinet shortly on a proposed approach and framework to be applied to these exemptions.

Financial Implications

32 There are no financial implications associated with these proposals.

Legislative Implications

33 There are no legislative implications associated with these proposals.

Impact Analysis

Regulatory Impact Statement, Climate and Population Implications

34 A regulatory impact statement is not required.

35 There are no climate implications associated with these proposals and no impacts on population groups.

Human Rights

36 This paper has no immediate human rights implications in terms of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

37 This paper has been prepared jointly by the Ministry of Transport and the Ministry of Business, Innovation and Employment. The Ministry of Health was consulted and is comfortabl with the proposals. The Department of the Prime Minister and Cabinet was informed.

Communications

38 Proactive ommunication is not planned. If an exemption is granted, the worker will be contacted by Immigration New Zealand and invited to apply for a variat on o conditions. The employer will also be notified.

Proac ve Release

39 The Ministry of Business, Innovation and Employment will proactively release his paper subject to redactions as appropriate under the Official Information Act 1982.

Recommendations

The Minister of Transport, the Minister for Economic Development and the Minister of Immigration recommend that the Committee:

1 **note** that on 19 March 2020, Cabinet agreed further border restrictions [CAB-20-MIN-0122 refers] to prevent travel to New Zealand for anyone other than:

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1.1 New Zealand citizens and residence class visa holders;

1.2 The partner, legal guardian or any dependent children travelling with a New Zealand citizen or residence class visa holder;

1.3 Australian citizens and permanent residence class visa holders ordinarily resident in New Zealand; and

1.4 People subject to regulation 25 or the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, which includes air and marine crew.

2 **note** that Cabinet also agreed high level parameters for case-by-case exemptions to COVID-19 border restrictions, which include [CAB-20-MIN-0122 refers]:

2.1 those who need to travel for humanitarian reasons;

2.2 essential health workers;

2.3 citizens of Samoa and Tonga for essential travel to New Zealand;

2.4 partners or dependents of a temporary work or student visa holder, and who normally live in New Zealand; and

2.5 any other essential workers identified by the group of Ministers with Power to Act.

3 **note** that officials have received a request to enable a worker in the aviation sector to enter New Zealand to perform an essential role, providing oversight of Boeing aircraft safety issues

4 **note** that this request is supported by the Ministry of Transport and the Ministry of Business, Innovation and Employment, as the worker is critical to the safety and viability of the commercial aviation sector in New Zealand

5 **note** that the request includes the wife and child of the essential worker

6 **note** that on arrival in Auckland, the worker and his family will be required to undergo quarantine or managed isolation in an approved facility for a minimum of 14 days

7 **note** that all costs associated with the worker's international and domestic travel and quarantine are to be met by the Civil Aviation Authority as the sponsoring employer

8 **agree** to make an exemption to the COVID-19 border restrictions for the essential worker and his family

9 **note** that further requests for exemption to temporary border restrictions for essential workers are anticipated

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10 **note** that officials are considering the following factors when developing advice on requests for exemption:

10.1 Why the workers are needed to ensure the continuity of an essential service;

10.2 Why it is not possible to re-deploy workers already in New Zealand (this could include time constraints or the specific nature of the work being done);

10.3 What is happening to any staff currently performing the role(s);

10.4 The length of the visa required and the reason for that length of visa; and

10.5 The requirement to undergo quarantine or managed isolation in an approved facility for a minimum of 14 days and whether appropriate domestic travel arrangements are in place

11 **agree** to delegate further decision making on exemptions to border restrictions for essential workers to the Minister for Economic Development and the relevant portfolio Minister

12 **agree** that requests for exemptions for classes of workers continue to be considered by the Ad-hoc Cabinet Committee on COVID-19 Response

13 **note** that the Minister for Economic Development will report on a three-monthly basis to the Cabinet Economic Development Committee with details of the exemption decisions made by Ministers

14 **note** that Officials are developing advice to bring to Cabinet shortly on a framework to be applied to exemptions requested through the marine pathway – primarily by arriving small marine craft and research vessels, but also fishing vessels seeking to discharge fish in New Zealand

Authorised for lodgement

Hon Phil Twyford

Minister of Transport
Minister for Economic Development

Hon Iain Lees-Galloway

Minister of Immigration

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Annex One

List of essential workers

NAME	DOB	NATIONALITY	PASSPORT NUMBER
s 9(2)(a)			

List of family members

NAME	DOB	NATIONALITY	PASSPORT NUMBER
s 9(2)(a)			

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