

In Confidence

Office of the Minister of Immigration
Chair, Cabinet Legislation Committee

Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19 – Applications and Fees) Regulations 2020

Proposal

- 1 I seek authorisation for submission of the Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19 – Applications and Fees) Regulations 2020 (the Amendment Regulations) to the Executive Council.

Executive summary

- 2 On 8 June 2020, Cabinet agreed to establish fees for those making a request to enter New Zealand while the current border restrictions are in place [CAB-20-MIN-0268]. On 6 July 2020, Cabinet Business Committee agreed to suspend the ability for a person outside of New Zealand to apply for a temporary entry class visa, except in limited circumstances (for example, where the person has been invited to apply for a visa as part of a request for an exception to border restrictions) [CAB-20-MIN-0069].
- 3 Regulation changes are required to implement both of these decisions. A waiver of the 28-day rule is sought so that the Amendment Regulations will come into force on 10 August 2020.

Background

- 4 As part of our COVID-19 response, the only people currently exempted from New Zealand's border restrictions are New Zealand citizens, permanent residents and the majority of resident visa holders, partners and children of New Zealand citizens and residents, Australian citizens and permanent residents ordinarily resident in New Zealand, diplomats, air crew and some marine travellers. Cabinet has also established a mechanism for case-by-case exceptions, considered under specific categories set out in immigration instructions, for people who have critical purpose to travel to New Zealand.
- 5 People can request a border exception by making an expression of interest (EoI) or request to apply for a critical purpose visa or variation of conditions. If that is successful, the person is invited to apply for a visa, or a variation of conditions if the person already holds a visa. The processing of these requests is currently unfunded. The majority of immigration processing is third party-funded. The volume of this work is increasing as more employers seek to recruit workers from offshore with specialist skills and expertise, and the costs associated with making the exceptions decisions cannot continue to be absorbed by Immigration New Zealand.
- 6 Under current immigration settings, people can still submit temporary entry class visa applications from outside New Zealand. However, section 43(1)(b) of the

Immigration Act 2009 prevents Immigration New Zealand from approving applications when the applicants will not qualify for entry permission, such as where border restrictions are in place.

- 7 This means that a backlog of temporary visa applications which cannot be approved at the current time is building, creating a reputational risk.

Policy

- 8 On 8 June 2020, Cabinet:

- 8.1 **agreed** to establish a fee for the EoI stage of processing an exception request, in the range of:
 - 8.1.1 \$250 to \$440 for employers who request exceptions for essential workers (or organisations or agencies that sponsor requests);
 - 8.1.2 \$30 to \$50 for individual applicants under all other established and future critical purpose categories;
- 8.2 **invited** the Minister of Immigration to confirm the exact amount of the fees within the indicated ranges when seeking Cabinet approval to introduce regulations to give effect to the fees;
- 8.3 **noted** that, consistent with New Zealand's international obligations and established practice, this fee would not apply in the case of diplomats and consular personnel, or to members of groups entering New Zealand pursuant to bilateral agreements obliging the government to facilitate their entry (e.g. personnel of National Antarctic Programmes);
- 8.4 **invited** the Minister of Immigration to give effect to these decisions through certifying Immigration Instructions and issuing drafting instructions to the Parliamentary Counsel Office to establish the Expression of Interest fee [CAB-20-MIN-0268].

- 9 On 6 July 2020, Cabinet Business Committee:

- 9.1 **agreed** to amend the Immigration (Visa, Entry Permission and Related Matters) Regulations 2010 to suspend the ability of persons outside of New Zealand from applying for a temporary entry class visa for a period of three months, unless:
 - 9.1.1 the person is applying for the visa through the exception to border restrictions process; or
 - 9.1.2 the application is for one of the following types of temporary entry class visa:
 - 9.1.2.1 visas for partners and dependent children of New Zealand citizens or residents, where the visa is based on that relationship;
 - 9.1.2.2 visas for diplomatic, consular and official staff and accompanying dependents;
 - 9.1.2.3 Antarctic Traveller Visitor Visas and Antarctic Work Visas;

9.1.2.4 Recognised Seasonal Employer (RSE) Limited Visas

9.2 **invited** the Minister of Immigration to give effect to this decision by issuing drafting instructions to the Parliamentary Counsel Office [CBC-20-MIN-0069].

- 10 The Amendment Regulations implement these decisions to establish a fee for the EoI stage, and to prevent a person outside of New Zealand from applying for a temporary entry class visa, except in the limited circumstances described above.

Fees

- 11 As noted at paragraph 8.4 above, Cabinet invited the Minister of Immigration to confirm the exact amount of the fees when seeking Cabinet approval to introduce regulations. I propose the fees be set as follows:

11.1 \$380 for employers who request exceptions for essential workers (or organisations or agencies that sponsor requests); and

11.2 \$45 for individual requestors under all other established and future critical purpose categories.

- 12 INZ operates on a cost-recovery model, and does not receive Crown funding for processing applications. In the absence of charging a fee for processing border exception requests, other third party fee payers are effectively subsidising this service. The proposed fees have been set to achieve cost recovery. This approach brings it in line with other services INZ offers.

- 13 The fees differ from any existing fees because the exceptions process is unique in the immigration system - for example, it requires ICT systems that are not comparable to other categories. The proposed fee for employers who request exceptions for essential workers is higher than that for individuals, because the process needs more senior people to assess and decide requests. The amounts proposed are GST inclusive where GST is payable.

- 14 Fees will be paid by those using the EoI process in order to travel to New Zealand. This group includes:

- a. critical health workers, their partners and dependent children
- a. employers seeking to bring other critical workers, their partners and dependent children
- b. certain classes or cohorts of workers as agreed by Cabinet
- c. citizens of Samoa and Tonga travelling at the request of the Samoan or Tongan Government and approved by Ministry of Foreign Affairs and Trade
- d. people with humanitarian reasons for travelling to New Zealand
- e. partners, dependent children or legal guardians of a New Zealand citizen or resident (with the exception of those with a resident visa granted outside New Zealand who have not entered New Zealand on that visa), who are either:
 - i. travelling with that New Zealand citizen or resident; or
 - ii. ordinarily resident in New Zealand; or

- iii. have a visa based on their relationship to the New Zealand citizen or resident
 - f. people who hold a visitor, work or student visa and:
 - i. are ordinarily resident in New Zealand; or
 - ii. are the partner or dependent child of a work or student visa holder in New Zealand.
- 15 This fee will not apply to Australian citizens and permanent residents if they are ordinarily resident in New Zealand. Australian citizens and permanent residents ordinarily resident in New Zealand are exempt from border restrictions. However, they are strongly encouraged to request confirmation ahead of travel that they do fall in that group. That request is not an EoI, and thus will not attract the EoI fee.

Timing and 28-day rule

- 16 A waiver of the 28-day rule is sought so that the Amendment Regulations come into force on 10 August 2020. A waiver is sought on the basis that:
- 16.1 the Amendment Regulations form part of the COVID-19 emergency response. Suspending offshore temporary entry class visa applications would be most effective in managing the immigration response to global COVID-19 outbreak if it came into effect immediately
 - 16.2 the Cabinet paper detailing the policy decisions was proactively released on 12 June, advising the public of the intention to establish a fee and providing an indicative range for the likely cost. The proposed fees are within that range and interested parties have had an opportunity to comment if they wished
 - 16.3 because there is currently no cost for a request, a longer period of notification could lead to an influx of opportunistic requests, thereby impacting on processing timeliness for all requests, and
 - 16.4 there is some urgency within Immigration New Zealand to establish the fee, in order to address the volume of work resulting from COVID-19 border restrictions, which is currently unfunded.

Compliance

- 17 The proposed amendments comply with:
- 17.1 the principles of the Treaty of Waitangi;
 - 17.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 17.3 the principles and guidelines set out in the Privacy Act 1993;
 - 17.4 relevant international standards and obligations; and
 - 17.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Statutory prerequisites for regulations under the Immigration Act 2009

- 18 Section 401A of the Immigration Act 2009 provides that the Minister of Immigration must not recommend the making of regulations suspending the ability of persons outside of New Zealand to apply for a type of visa unless satisfied that doing so is reasonably necessary to manage the effects, or deal with the consequences of:
- 18.1 the outbreak of COVID-19;
 - 18.2 measures taken under the Immigration Act 2009, or any other enactment, to contain or mitigate the outbreak of COVID-19 or its effects; or
 - 18.3 any other measures (whether in New Zealand or elsewhere) to contain or mitigate the outbreak of COVID-19 or its effects.
- 19 I consider that these conditions have been met, as suspending the ability to apply for temporary entry class visas is a reasonably necessary measure to manage the consequences of the border restrictions which are currently in place.

Regulations Review Committee

- 20 There do not appear to be any grounds for the Regulations Review Committee to draw the Amendment Regulations to the attention of the House of Representatives under Standing Order 319. My view and the certification by Parliamentary Counsel set out at paragraph 21, is based on the Ministry of Business, Innovation and Employment's legal advice set out at paragraph 21.1 below.

Certification by Parliamentary Counsel

- 21 The Parliamentary Counsel Office has certified the regulations as being in order for submission to Cabinet:
- 21.1 in light of Ministry of Business, Innovation, and Employment legal advice that relevant immigration instructions (which require that before visa holders apply for the conditions of their temporary entry class visa or resident class visa to be varied, they must lodge a request, and be authorised, to apply for the variation) are not inconsistent with the Immigration Act 2009; and
 - 21.2 provided that the regulations are made on the Minister's recommendation given when they are satisfied as required by section 401A(4) of the Immigration Act 2009; and
 - 21.3 except that the regulations will come into force earlier than the 28th day after their notification in the *Gazette*.

Impact Analysis

- 22 The Treasury has determined that the regulatory proposals in this paper are exempt from the requirement to provide a Regulatory Impact Statement (RIS) because they are intended to alleviate the short term impacts of the declared emergency event of the COVID-19 outbreak. These proposals are required urgently to be effective, making a complete, robust and timely impact analysis unfeasible.

Publicity

- 23 The new fees and the suspension of offshore temporary entry class visa applications will be communicated on Immigration New Zealand's website, with targeted communications sent to key stakeholders, such as Licensed Immigration Advisers.
- 24 Communications will be appropriately positioned within wider messaging designed to ensure that international markets (including international education markets) understand that New Zealand will welcome travellers once the threat of importing COVID-19 can be appropriately managed.

Proactive release

- 25 This paper will be proactively released following Cabinet consideration.

Consultation

- 26 In addition to the broad consultation undertaken on the policy paper, further consultation on the specific fees has been undertaken with the Treasury and Ministry of Foreign Affairs and Trade.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that on 8 June 2020, Cabinet agreed to establish a fee for the Expression of Interest stage of processing an exception request, in the range of:
 - 1.1 \$250 to \$440 for employers who request exceptions for essential workers (or organisations or agencies that sponsor requests);
 - 1.2 \$30 to \$50 for individual applicants under all other established and future critical purpose categories [CAB-20-MIN-0268];
- 2 **agree** to set fees as follows:
 - 2.1 \$380 for employers who request exceptions for essential workers (or organisations or agencies that sponsor requests);
 - 2.2 \$45 for individual applicants under all other established and future critical purpose categories;
- 3 **note** that the fees described in recommendation 2 will not be charged to Australian citizens or permanent residents who are ordinarily resident in New Zealand, as they do not use the Expression of Interest process to seek confirmation ahead of travel that they are ordinarily resident;
- 4 **note** that on 6 July 2020, Cabinet Business Committee agreed to suspend the ability of persons outside of New Zealand from applying for a temporary entry class visa for a period of three months, unless:
 - 4.1 the person is applying for the visa through the exception to border restrictions process; or
 - 4.2 the application is for one of the following types of temporary entry class visa:

- 4.2.1 visas for partners and dependent children of New Zealand citizens or residents, where the visa is based on that relationship;
 - 4.2.2 visas for diplomatic, consular and official staff and accompanying dependents, including:
 - 4.2.3 diplomats accredited to New Zealand and currently resident in New Zealand;
 - 4.2.4 new diplomatic and consular personnel filling established positions at a foreign mission or consular post in New Zealand;
 - 4.2.5 other diplomatic and consular personnel authorised by the Minister of Foreign Affairs or his delegate where there is compelling national interest;
- 4.3 Antarctic Traveller Visitor Visas and Antarctic Work Visas;
- 4.4 Recognised Seasonal Employer (RSE) Limited Visas [CBC-20-MIN-0069];
- 5 **note** that section 401A of the Immigration Act 2009 prevents the Minister of Immigration from recommending regulations suspending the ability of persons offshore to apply for a temporary entry class visa unless satisfied that doing so is reasonably necessary to manage the effects, or deal with the consequences of:
 - 5.1 the outbreak of COVID-19;
 - 5.2 measures taken under the Immigration Act 2009, or any other enactment, to contain or mitigate the outbreak of COVID-19 or its effects; or
 - 5.3 any other measures (whether in New Zealand or elsewhere) to contain or mitigate the outbreak of COVID-19 or its effects;
- 6 **note** that the Minister of Immigration considers the criteria under section 401A of the Immigration Act 2009 to have been met;
- 7 **note** that the Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19 – Applications and Fees) Regulations 2020 give effect to the decisions referred to in paragraphs 2 and 4 above;
- 8 **note** that a waiver of the 28-day rule is sought:
 - 8.1 so that the regulations can come into force on 10 August 2020;
 - 8.2 on the grounds that:
 - 8.2.1 these regulations form part of the COVID-19 emergency response;
 - 8.2.2 the public has been previously advised of the intention to establish a fee through the proactive release of the previous Cabinet paper, and the proposed fees are within the range advised;
 - 8.2.3 a longer notification period could result in an influx of opportunistic requests, thereby impacting on processing timeliness for all requests; and
 - 8.2.4 the fees seek to urgently address the volume of work resulting from COVID-19 border restrictions, which is currently unfunded.

- 9 **agree** to waive the 28-day rule so that the regulations can come into force on 10 August 2020; and
- 10 **authorise** the submission to the Executive Council of the Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19 – Applications and Fees) Regulations 2020.

Authorised for lodgement

Hon Iain Lees-Galloway
Minister of Immigration



Cabinet Legislation Committee

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 (Visa, Entry Permission, and Related Matters) Amendment (COVID-19 – Applications and Fees) Regulations 2020

Portfolio **Immigration**

On 21 July 2020, the Cabinet Legislation Committee:

- 1 **noted** that on 8 June 2020, Cabinet agreed to establish a fee for the Expression of Interest stage of processing an exception request, in the range of:
 - 1.1 \$250 to \$440 for employers who request exceptions for essential workers (or organisations or agencies that sponsor requests);
 - 1.2 \$30 to \$50 for individual applicants under all other established and future critical purpose categories;[CAB-20-MIN-0268]
- 2 **agreed** to set fees as follows:
 - 2.1 \$380 for employers who request exceptions for essential workers (or organisations or agencies that sponsor requests);
 - 2.2 \$45 for individual applicants under all other established and future critical purpose categories;
- 3 **noted** that the fees described in paragraph 2 will not be charged to Australian citizens or permanent residents who are ordinarily resident in New Zealand, as they do not use the Expression of Interest process to seek confirmation ahead of travel that they are ordinarily resident;
- 4 **noted** that on 6 July 2020, the Cabinet Business Committee agreed to suspend the ability of persons outside of New Zealand from applying for a temporary entry class visa for a period of three months, unless:
 - 4.1 the person is applying for the visa through the exception to border restrictions process; or
 - 4.2 the application is for one of the following types of temporary entry class visa:
 - 4.2.1 visas for partners and dependent children of New Zealand citizens or residents, where the visa is based on that relationship;

- 4.2.2 visas for diplomatic, consular and official staff and accompanying dependents, including:
- 4.2.3 diplomats accredited to New Zealand and currently resident in New Zealand;
- 4.2.4 new diplomatic and consular personnel filling established positions at a foreign mission or consular post in New Zealand;
- 4.2.5 other diplomatic and consular personnel authorised by the Minister of Foreign Affairs or his delegate where there is compelling national interest;

4.3 Antarctic Traveller Visitor Visas and Antarctic Work Visas;

4.4 Recognised Seasonal Employer (RSE) Limited Visa;

[CBC-20-MIN-0069]

5 **noted** that section 401A of the Immigration Act 2009 prevents the Minister of Immigration from recommending regulations suspending the ability of persons offshore to apply for a temporary entry class visa unless satisfied that doing so is reasonably necessary to manage the effects, or deal with the consequences of:

- 5.1 the outbreak of COVID-19;
- 5.2 measures taken under the Immigration Act 2009, or any other enactment, to contain or mitigate the outbreak of COVID-19 or its effects; or
- 5.3 any other measures (whether in New Zealand or elsewhere) to contain or mitigate the outbreak of COVID-19 or its effects;

6 **noted** that the Minister of Immigration considers the criteria under section 401A of the Immigration Act 2009 to have been met;

7 **noted** that the Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19 – Applications and Fees) Regulations 2020 give effect to the decisions above;

8 **noted** that a waiver of the 28-day rule is sought:

8.1 so that the regulations can come into force on 10 August 2020;

8.2 on the grounds that:

- 8.2.1 these regulations form part of the COVID-19 emergency response;
- 8.2.2 the public has been previously advised of the intention to establish a fee through the proactive release of the previous Cabinet paper, and the proposed fees are within the range advised;
- 8.2.3 a longer notification period could result in an influx of opportunistic requests, thereby impacting on processing timeliness for all requests;
- 8.2.4 the fees seek to urgently address the volume of work resulting from COVID-19 border restrictions, which is currently unfunded;

9 **agreed** to a waiver of the 28-day rule so that the Regulations can come into force on 10 August 2020;

- 10 **authorised** the submission to the Executive Council of the Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19 – Applications and Fees) Regulations 2020 [PCO 23009/14.0].

Gerrard Carter
Committee Secretary

Present:

Hon Chris Hipkins (Chair)
Hon Andrew Little
Hon David Parker
Hon Stuart Nash
Hon Iain Lees-Galloway
Hon Kris Faafoi
Hon Tracey Martin
Hon Aupito William Sio
Hon Julie Ann Genter
Hon Eugenie Sage
Michael Wood MP (Senior Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG