

In Confidence

Office of the Minister of Immigration
Chair, Cabinet Business Committee

COVID-19 Response: Immigration Amendment Regulations

Proposal

- 1 This paper seeks Cabinet's agreement to an immigration regulation change to suspend offshore applications for most types of temporary entry class visa for three months.

Relation to government priorities

- 2 The proposed immigration regulation change relates to the Government's response to COVID-19.

Executive Summary

- 3 This paper seeks Cabinet's agreement to make a change to the Immigration (Visa, Entry Permission and Related Matters) Regulations 2010 (Visa Regulations). This change would suspend the ability of persons outside of New Zealand to apply for most categories of temporary entry class visa for three months until the person has been accepted under the border exception process and invited to apply.
- 4 This change is intended manage the flow of incoming visas which cannot be granted until the applicant is able to travel. It will also enable more efficient processing of visas for those who have been granted exemptions or exceptions which allow them to travel to New Zealand.
- 5 I propose that offshore applications and expressions of interest for all temporary entry class visa categories be suspended, apart from applications from persons who have been invited to apply for a visa by Immigration New Zealand through the border exception process, or applications for the following visa types:
 - 5.1 Visas for partners and dependent children of a New Zealand citizen or resident, where the visa is based on that relationship;
 - 5.2 Antarctic Visitor and Work Visas;
 - 5.3 Visas for diplomatic, consular and official staff, and accompanying dependents;
 - 5.4 Recognised Seasonal Employer Limited Visas.
- 6 I recommend leaving these visa types open for application, to align with current border exemption policy settings, and to reflect their status with respect to New Zealand's international obligations and our special relationship with the Pacific.

Timing

- 7 I intend to seek Cabinet's agreement to waive the 28-day rule for this regulation change as the proposed change would be most effective in contributing to the COVID-19 emergency response if it is to come into effect immediately.

The Government has made a number of changes to the immigration regulatory and legislative regime in response to the COVID-19 outbreak

- 8 Cabinet has approved a series of changes to the immigration regulatory and legislative regime since the World Health Organization declared COVID-19 to be a public health emergency of international concern on 30 January 2020.
- 9 The Immigration (Carriers' Information Obligations) Amendment Regulations 2020, made on 3 February, required commercial air and cruise carriers to ask passengers and crew whether they had been in mainland China in the previous 14 days, and to advise MBIE of any positive responses before those individuals boarded the craft to travel to New Zealand. That requirement was updated on 16 March 2020 by the Immigration (Carriers' Information Obligations) Amendment Regulations (No 2) 2020, which changed the name of the virus (from nCov-2019 to COVID-19) and extended the maximum timeframe for the requirement, from 30 April to 30 September 2020.
- 10 On 16 March 2020 the Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2020 amended the Visa Regulations to provide for the enhanced management of marine arrivals. The changes:
- 10.1 gave the Minister of Immigration the power to issue a Special Direction extending the time by which a person who has not been granted a visa or entry permission, and who arrives at New Zealand at a place other than an immigration control area, must report to an immigration officer at an immigration control area; and
 - 10.2 established that deemed entry permission and visas only apply to passengers and crew on board a cruise ship that has been granted pratique¹ under the Health Act 1956.
- 11 More recently, the Immigration (COVID-19 Response) Amendment Act 2020 (the Amendment Act), passed by the House on 14 May 2020, added eight time-limited powers aimed at enabling the Government to more efficiently manage the immigration aspects of the COVID-19 emergency situation. One of those powers (the time-limited ability to suspend specified application or Expression of Interest types) can only be exercised by making regulations.

Exercising a regulation-making power would further support the Government's immigration response to COVID-19

- 12 A critical element of New Zealand's protection against COVID-19 is strict border measures blocking entry to New Zealand to all persons except citizens, most residents (and their partners and dependent children), and those with an approved border exception. These measures are likely to remain in place for some time. Future travellers (including international students) will be important for the post-COVID rebuild, but strict border policies and constraints on managed

¹ Pratique is permission granted to a ship to berth at a wharf or other landing place and is given when the relevant medical officer of health or health protection officer is satisfied that no quarantinable disease exists on board.

isolation and quarantine places mean that it is unlikely that international visitors will be able to travel to New Zealand in the immediate future.

- 13 Under section 43(1)(b) of the Immigration Act 2009, Immigration New Zealand cannot approve applications when the applicants will not qualify for entry permission.
- 14 However, as the applications being submitted at present in general meet policy requirements they cannot be declined either. This means that a backlog of temporary (visitor, student and working holiday) visa applications which cannot be processed at the current time is building. This creates a reputational risk, and a potential legal risk if applications are approved but individuals then cannot enter New Zealand. If Immigration New Zealand continues to receive and process temporary visa applications, officials anticipate that applicants will request refunds for visas in the event that they are unable to travel to New Zealand.
- 15 In response, I propose exercising the regulation-making power introduced in the Immigration (COVID-19 Response) Amendment Act 2020. The new regulation would suspend the ability of persons offshore to apply for most temporary entry class visas for a period of three months.

Suspending offshore temporary entry class visa applications would send a clear signal that New Zealand's border remains closed for the immediate future

- 16 The Immigration (COVID-19) Amendment Act 2020 introduced a time-limited power to make regulations suspending the ability of a class of persons who are outside of New Zealand to apply, or submit an expression of interest in applying, for a particular class or type of visa (new section 401A) for a period of up to three months. The Amendment Act specifies that in recommending such regulations, the Minister of Immigration must be satisfied that they are reasonably necessary to manage the effects, or deal with the consequences of:
- 16.1 the outbreak of COVID-19;
 - 16.2 measures taken under the Immigration Act or any other enactment to respond to the outbreak of COVID-19 or its effects; or
 - 16.3 any other measures (whether in New Zealand or elsewhere) to contain or mitigate the outbreak of COVID-19 or its effects.
- 17 I consider that suspending offshore temporary visa applications would complement the border restrictions currently in place, and communicate to persons offshore that unless they are members of an exempted class of people or have special circumstances which qualify for a border exception, they are unable to travel to New Zealand until border restrictions are eased.

Certain applications for temporary class entry visas should be excluded from the suspension

- 18 I propose that the suspension would prevent all persons outside of New Zealand from applying for a temporary entry class visa, except where applying for one as part of a border exception application, or where the application is for one of the following temporary visa types:
- 18.1 Visas for partners and dependent children of New Zealand citizens or residents, where the visa is based on that relationship;

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- 18.2 Visas for diplomatic, consular and official staff and accompanying dependants, including:
 - 18.2.1 Diplomats accredited to New Zealand and currently resident in New Zealand;
 - 18.2.2 New diplomatic and consular personnel filling established positions at a foreign mission or consular post in New Zealand; and
 - 18.2.3 Other diplomatic and consular personnel authorised by the Minister of Foreign Affairs or his delegate where there is compelling national interest;
 - 18.3 Antarctic Traveller Visitor Visas and Antarctic Work Visas;
 - 18.4 Recognised Seasonal Employer (RSE) Limited Visas.
- 19 These visa types should remain open to applications to align with the current border exemption policy. Under current policy settings, partners and dependent children of New Zealand citizens or residents, diplomats who hold (or are filling) a post in New Zealand do not need to seek prior approval before travelling to and entering New Zealand.
- 20 These visa types should also remain open to acknowledge their special status with regard to New Zealand's international relations, and that some need to remain open due to New Zealand's commitments under certain treaties. New Zealand has several treaty-status cooperation agreements with other Antarctic Treaty parties, including the United States, South Korea and Italy. These agreements generally oblige New Zealand to facilitate entry to and transit through New Zealand as a "gateway" to Antarctica. We risk breaching those agreements if we do not accept applications from foreign national participants in Antarctic Treaty parties' national Antarctic programmes.
- 21 The Recognised Seasonal Employer (RSE) scheme is key pillar of our relationships with Pacific Island countries. While acknowledging that border restrictions continue to prevent most Pacific nationals from entering New Zealand, the RSE visa should remain open to demonstrate to Pacific partners that their priorities remain important to New Zealand and there is ongoing commitment to the scheme as part of our broader engagement with the region, even if travel to New Zealand is not possible for all partners in the short term. Communication with Pacific governments will be managed carefully so as to avoid raising expectations about access into New Zealand while current border restrictions remain.

The suspension would not affect a person's ability to apply for a visa if applying for one as part of an application for an exception to border restrictions

- 22 The general suspension of applications would not prevent an offshore person from applying for a temporary entry class visa when they have been invited to do so by Immigration New Zealand as part of the process to seek an exception to border restrictions.
- 23 If Cabinet decides to expand the grounds for border exceptions (for example to include cohorts of international students who do not already hold visas, or other foreign nationals who could support New Zealand's post-COVID economic recovery, if suitable quarantine arrangements are agreed) then processing of those applications would occur under the exception process.

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- 24 I also note that a person's ability to apply for refugee and protected person status will not be impacted by the proposed suspensions.

Residence class visas would remain open for applications and expressions of interest

- 25 I do not propose suspending offshore applications or expressions of interest for residence class visas. The application process for residence class visas takes longer than for temporary entry class visas, and these applicants are therefore less likely to be impacted by short-term border restrictions.

Suspending offshore temporary visa applications is reasonably necessary to respond to COVID-19

- 26 As noted in paragraph 16 above, the Amendment Act requires the Minister of Immigration to be satisfied that such regulations are "reasonably necessary" to respond to the COVID-19 outbreak, or to manage the effects or consequences of measures taken to respond to it. I consider that this test is satisfied, as suspending the ability to apply for visas is a reasonably necessary measure to manage the consequences of the border restrictions which are currently in place.

The suspension would apply for a period of three months, and will be regularly reviewed

- 27 The Amendment Act specifies that a suspension may be for a period not exceeding three months (new section 401A(5)), but allows the period of suspension to be extended for a further three months if the suspension continues to be reasonably necessary to manage the effects or deal with the consequences of COVID-19 (new section 401A(6)). The extension must be made before the end of the suspension period.
- 28 I propose that the suspension be effective for three months, and that the regulations be reviewed monthly, or as otherwise required, to ensure that it continues to be necessary as the COVID-19 context changes.
- 29 I also propose that Ministers with Power to Act (the Minister of Immigration, the Minister of Foreign Affairs, the Minister of Housing and the Minister of Health) be authorised to revoke the regulations, in whole or in part, upon my recommendation. This would enable, before the end of the three month period, the suspension to be lifted, or offshore applications for a particular visa type to be re-opened (example to enable people in Australia to apply for a visa should the development of the proposed Trans-Tasman Safe Travel Zone progress quickly).
- 30 Should it be necessary to consider extending this period further, I propose to seek Cabinet's approval before the end of the suspension period.

Timing

- 31 I intend to seek Cabinet's agreement to waive the 28-day rule, as I consider that these regulations would be most effective in managing the immigration response to global COVID-19 outbreak if they come into effect immediately.

Financial Implications

- 32 Immigration New Zealand would lose fee revenue from the offshore temporary entry class visa applications that would be suspended while the proposed regulations are in effect. However, I do not consider it right for Immigration New Zealand to continue to accept applications and fees when there is no or a very low likelihood that applicants will be able to travel to New Zealand. In addition, it

is likely that a proportion of applicants would request refunds, which carry a relatively high administrative cost.

Legislative Implications

- 33 As noted above, it is proposed that the policy recommendations in this paper are given effect by amending the Immigration (Visa, Entry Permission and Related Matters) Regulations 2010.

Impact Analysis

Regulatory Impact Statement

- 34 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. The Treasury recommends a Supplementary Analysis Report or plans for a Post Implementation Assessment (in lieu of RIA) that addresses interactions, trade-offs and implementation issues related to numerous proposals in the border package.

Climate Implications of Policy Assessment

- 35 This proposal does not have climate implications.

Population Implications

- 36 This proposal does not have population implications.

Human Rights

- 37 While the Immigration Act 2009 recognises that immigration matters inherently involve different treatment on the basis of personal characteristics, immigration policy development seeks to ensure that any changes are necessary and proportionate. The Ministry of Business, Innovation and Employment considers that the proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

- 38 This paper was prepared by the Ministry of Business, Innovation and Employment. The following agencies were consulted and their views taken into account during its development: the Ministries of Foreign Affairs and Trade and Education; The Treasury. The Department of Prime Minister and Cabinet was informed.

Communications

- 39 A communications plan will be developed by officials in consultation with Ministers' offices. 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

- 40 The paper will be proactively released, subject to any redactions consistent with the Official Information Act 1982.

Recommendations

The Minister of Immigration recommends that the Committee:

- 1 **Note** that further changes to the immigration regulatory regime are required to manage the consequences of the global outbreak of COVID-19;
- 2 **Agree** 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:
 - 2.1 the person is applying for the visa through the exception to border restrictions process; or
 - 2.2 the application is for one of the following types of temporary entry class visa:
 - 2.2.1 Visas for partners and dependent children of New Zealand citizens or residents, where the visa is based on that relationship;
 - 2.2.2 Visas for diplomatic, consular and official staff and accompanying dependants, including:
 - 2.2.2.1 Diplomats accredited to New Zealand and currently resident in New Zealand;
 - 2.2.2.2 New diplomatic and consular personnel filling established positions at a foreign mission or consular post in New Zealand; and
 - 2.2.2.3 Other diplomatic and consular personnel authorised by the Minister of Foreign Affairs or his delegate where there is compelling national interest;
 - 2.2.3 Antarctic Traveller Visitor Visas and Antarctic Work Visas; and
 - 2.2.4 Recognised Seasonal Employer (RSE) Limited Visas;
- 3 **Invite** the Minister of Immigration to review regulations monthly, or as required, to determine whether suspending the ability of persons outside of New Zealand from applying for a temporary entry class visa continues to be necessary;
- 4 **Agree** that Ministers with Power to Act (the Minister of Immigration, the Minister of Foreign Affairs, the Minister of Housing and the Minister of Health) be authorised to revoke the regulations, in whole or in part, should the Minister of Immigration recommend that suspending the ability of persons outside of New Zealand from applying for a temporary entry class visa is no longer required, or that applications for certain temporary entry class visas should be reopened before the end of the suspension period;
- 5 **Note** that the Minister of Immigration may seek Cabinet agreement to extend this suspension for a further three months, should it continue to be reasonably

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necessary to manage the effects or respond to the consequences of the COVID-19 outbreak;

- 6 **Note** that the Minister of Immigration intends to seek an exemption to the 28-day rule for this regulation change, on the basis that the regulations form part of the COVID-19 emergency response;
- 7 **Invite** the Minister of Immigration to issue drafting instructions to the Parliamentary Counsel Office in accordance with the decision in paragraphs 2 above; and
- 8 **Authorise** the Minister of Immigration to make decisions on any minor or technical matters, consistent with the policy proposals in this paper, that may arise during the drafting process.

Authorised for lodgement

Hon Iain Lees-Galloway
Minister of Immigration



Cabinet Business 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.

COVID-19 Response Immigration Amendment Regulations

Portfolio **Immigration**

On 6 July 2020, the Cabinet Business Committee:

- 1 **noted** that further changes to the immigration regulatory regime are required to manage the consequences of the global outbreak of COVID-19;
- 2 **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:
 - 2.1 the person is applying for the visa through the exception to border restrictions process; or
 - 2.2 the application is for one of the following types of temporary entry class visa:
 - 2.2.1 visas for partners and dependent children of New Zealand citizens or residents, where the visa is based on that relationship;
 - 2.2.2 visas for diplomatic, consular and official staff and accompanying dependants, including:
 - 2.2.2.1 diplomats accredited to New Zealand and currently resident in New Zealand;
 - 2.2.2.2 new diplomatic and consular personnel filling established positions at a foreign mission or consular post in New Zealand;
 - 2.2.2.3 other diplomatic and consular personnel authorised by the Minister of Foreign Affairs or his delegate where there is compelling national interest;
 - 2.2.3 Antarctic Traveller Visitor Visas and Antarctic Work Visas;
 - 2.2.4 Recognised Seasonal Employer (RSE) Limited Visas;
- 3 **invited** the Minister of Immigration to review the regulations monthly, or as required, to determine whether suspending the ability of persons outside of New Zealand from applying for a temporary entry class visa continues to be necessary;

- 4 **authorised** a group of Ministers, comprising of the Minister of Foreign Affairs, Minister of Housing, Minister of Health, and Minister of Immigration, with Power to Act to revoke the regulations, in whole or in part, should the Minister of Immigration recommend that:
- 4.1 suspending the ability of persons outside of New Zealand from applying for a temporary entry class visa is no longer required; or
- 4.2 applications for certain temporary entry class visas should be reopened before the end of the suspension period;
- 5 **noted** that the Minister of Immigration may seek Cabinet agreement to extend the suspension agreed in paragraph 2 above for a further three months, should it continue to be reasonably necessary to manage the effects or respond to the consequences of the COVID-19 outbreak;

Legislative implications

- 6 **noted** that the Minister of Immigration intends to seek an exemption to the 28-day rule for the suspension agreed in paragraph 2 above, on the basis that the regulations form part of the COVID-19 emergency response;
- 7 **invited** the Minister of Immigration to issue drafting instructions to the Parliamentary Counsel Office to give effect to the decisions in paragraph 2 above;
- 8 **authorised** the Minister of Immigration to make decisions on any minor or technical matters, consistent with the policy proposals in the paper under CBC-20-SUB-0069, that may arise during the drafting process.

Rachel Clarke
Committee Secretary

Present:

Rt Hon Jacinda Ardern (Chair)
Hon Kelvin Davis
Hon Grant Robertson
Hon Phil Twyford
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Andrew Little
Hon Carmel Sepuloni
Hon David Parker
Hon Nanaia Mahuta
Hon Iain Lees-Galloway
Hon Jenny Salesa
Hon Tracey Martin
Hon James Shaw

Officials present from:

Office of the Prime Minister
Department of the Prime Minister and Cabinet